

SOUTH DAKOTA RETIREMENT SYSTEM LAW

2007 EDITION



THOMSON
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TITLE 3

PUBLIC OFFICERS AND EMPLOYEES

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Section

3-12-165 to 3-12-188. Transferred.

Commission Note

Session Laws 1994, ch 157, § 2, provides, "The term, law trained magistrate, wherever it is used in this code means magistrate judge. The Code Commission in future supplements and revisions of the South Dakota Codified Laws shall substitute the term, magistrate judge, and its derivatives for the term, law trained magistrate, and its derivatives."

Section 2 of chapter 60 of the 1992 Session Laws changed the term "city"

to "first class municipality" and "second class municipality" and changed the term "town" to "third class municipality". Section 2 also substituted "municipality" for "city or town" if the class of the municipality was not specified. The Code Commission has implemented this act throughout this chapter.

Administrative Code References

State retirement system, retirement, see S.D. Admin. R. 62:01:01:01 et seq.

3-12-1. Repealed by SL 1974, ch 35, § 80

Historical and Statutory Notes

The repealed section related to retirement programs prior to 1951 terminat-

ed, previously retired persons protected, teachers' and judges' systems unaffected.

3-12-2 to 3-12-45. Repealed by SL 1974, ch 35, § 80

Historical and Statutory Notes

Section 3-12-2 related to definition of terms.

Section 3-12-3 related to retirement system established, effective date of operation, name of system.

Section 3-12-4 related to board of trustees created, composition, legal adviser to board.

Section 3-12-4.1 related to direction and supervision by Bureau of Personnel, independent functions retained by board.

Section 3-12-5 related to oath of office of trustees.

Section 3-12-6 related to reimbursement of trustees' expenses.

Section 3-12-7 related to meetings of board, procedural rules and record of proceedings.

Section 3-12-8 related to chairman and vice-chairman of board.

Section 3-12-9 related to appointment of administrator, duties and bond.

Section 3-12-10 related to employment of services and personnel, services rendered by auditor's office.

Section 3-12-11 related to rules and regulations.

Section 3-12-12 related to records of board proceedings, preparation and distribution of annual report, annual audit, terms of trustees' bonds.

Section 3-12-13 related to name of retirement system used in transactions.

Section 3-12-14 related to selection and change of funding agents, compensation.

Section 3-12-15 related to control and management of fiscal affairs.

Section 3-12-16 related to determination of prior service credits.

Section 3-12-17 related to change of future service benefit formula.

Section 3-12-18 related to service requirement for participation in system.

Section 3-12-19 related to employees required to participate, acceptance or continuation of employment deemed consent.

Section 3-12-19.1 related to circuit court reporters deemed state employees.

Section 3-12-19.2 related to municipal judges and court reporters eligible

to participate as members of political subdivision.

Section 3-12-20 related to officers and employees excluded from system.

Section 3-12-20.1 related to political subd. governing body not eligible as member.

Section 3-12-21 related to election by officer or department head to participate in system, political subd. officials.

Section 3-12-22 related to members' contributions, salary deduction and credit to retirement system, disbursement.

Section 3-12-23 related to employers' contributions, credit to retirement fund, state not to contribute for political subdivision, excess contributions prohibited.

Section 3-12-23.1 related to delinquent subd. contributions, deduction from state payments.

Section 3-12-24 related to funds credited to retirement system fund, disbursements.

Section 3-12-25 related to normal retirement, pension payable, determination of future service and prior service benefits.

Section 3-12-26 related to certification of prior service, proof where records lost or destroyed.

Section 3-12-27 related to vesting schedule for normal retirants, minimum age for retirement.

Section 3-12-27.1 related to early retirement, pension payable.

Section 3-12-28 related to early retirement vesting schedule, additional vesting for additional service.

Section 3-12-29 related to benefits payable monthly, vested interest required, lump-sum payment prohibited, application for retirement.

Section 3-12-29.1 related to designation, alteration, or revocation of beneficiary, payment of benefits.

Section 3-12-29.2 related to death benefit payable to beneficiary or estate.

Section 3-12-29.3 related to suspension of annuity during employment.

Section 3-12-30 related to refund of contributions on termination of public service, employer contributions remain in fund.

Section 3-12-31 related to benefits and contributions suspended during leave of absence, authorized leaves, credit for military service.

Section 3-12-32 related to contributions left in system on termination of employment, reinstatement on return, withdrawal by employee not returning.

Section 3-12-33 related to termination of membership on withdrawal of contributions or retirement.

Section 3-12-34 related to re-employment of former employee, vested interest, additional credits.

Section 3-12-35 related to cessation of membership on retirement or death.

Section 3-12-36 related to political subds. and agencies permitted to participate in system, approval required, actuarial investigations and findings.

Section 3-12-37 related to commencement of participation by political subdivision.

Section 3-12-38 related to contributions by and for political subd. employees, remittance and statement to state treasurer.

Section 3-12-39 related to information furnished board of trustees on employees of political subdivision.

Section 3-12-40 related to withdrawal from participation by political subdivision, liquidation of accrued benefits, refunds not permitted.

Section 3-12-41 related to optional form of pension, procedure for election by member.

Section 3-12-42 related to expense fund for administrative expenses.

Section 3-12-43 related to integration of other retirement plans into retirement system.

Section 3-12-44 related to correction of errors, adjustment of payments.

Section 3-12-45 related to exemption from taxation, process, and assignment.

3-12-46. Previous retirement systems consolidated—Purpose

The Supreme and Circuit Court Judicial Retirement System, district county court and municipal court judges retirement

§ 3-12-46

PUBLIC OFFICERS AND EMPLOYEES

program, South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System, and South Dakota Public Employees Retirement System are hereby continued as a consolidated system known as the South Dakota Retirement System to provide an orderly means of continuing benefits of those already retired and those eligible to retire from the respective systems.

Source: SL 1967, ch 303, § 1; SDCL § 3-12-3; SL 1968, ch 216, § 1; SL 1974, ch 35, § 1; SL 1976, ch 39, § 4.

Commission Note

Chapter 28, SL 1979, provided certain benefits for teachers who retired prior to July 1, 1974 qualified for a straight life annuity under former § 13-45-56, and provided an appropriation therefor.

Cross References

Deferred compensation plan for public employees, see §§ 3-13-49 to 3-13-55.

Retirement program liquidation, authorization, see § 6-2-1 et seq.

Library References

Officers and Public Employees
⇒101.5(1).

Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

Research References

ALR Library

Abandonment of public office, acceptance or assertion of right to pension or retirement as, 76 A.L.R.2d 1312.

Additional retirement allowances for public employees previously retired, validity of legislation providing for, 27 A.L.R.2d 1442.

Beneficiary and heirs or legatees of licensed employee covered by public pension or retirement plan, rights as between, 72 A.L.R.2d 924; 5 A.L.R.3d 644.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 A.L.R.2d 506.

Divorce and separation, pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses, 94 A.L.R.3d 176.

Firefighters, determination whether firefighter's disability is service-connected for disability pension purposes, 7 A.L.R.4th 799.

Independent income, statute or ordinance providing for reduction of pension or retirement benefit of public officer because of, 7 A.L.R.2d 692.

Mandatory retirement of public officer or employee based on age, 81 A.L.R.3d 811.

Misconduct as affecting right to pension or retention of position in retirement system, 76 A.L.R.2d 566.

Officers as "employees" within meaning of statute, 5 A.L.R.2d 415.

Peace officer, determination whether peace officer's disability is service-connected for disability pension purposes, 12 A.L.R.4th 1158.

Relationship between performance of official duties and subsequent disability or death, for purpose of pension, 85 A.L.R.2d 1048.

Retroactive change in rate of employee's contribution to public pension fund, validity of, 78 A.L.R.2d 1197.

Unemployment compensation, right to unemployment compensation as

affected by receipt of pension, 56 A.L.R.3d 520.

Encyclopedias

60A Am. Jur.2d, Pensions and Retirement Funds, §§ 1603-1607, 1609, 1614-1616, 1618, 1630, 1651, 1652, 1654-1656.

Forms

19A Am. Jur. Pl. & Pr. Forms Pensions & Retirement Funds § 13.

United States Supreme Court Public employee retirement benefits,

Pensions,

Variance in municipal employees' pension contribution based on sex of employee, see *City of Los Angeles, Dept. of Water and Power v. Manhart*, U.S. Cal. 1978, 98 S.Ct. 1370, 435 U.S. 702, 55 L.Ed.2d 657, on remand 577 F.2d 98.

Retirement age,

City fire fighters, mandatory retirement age, see *Johnson v. Mayor and City Council of Baltimore*, U.S. Md. 1985, 105 S.Ct. 2717, 472 U.S. 353, 86 L.Ed.2d 286, on remand.

Notes of Decisions

Counties 1

Exemptions 2

1. Counties

Retaliation claim, set forth in complaint based on failure of county to join state retirement system, failed to state a cause of action. *SDCL 3-12-46 et seq. Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. *Officers And Public Employees* ⇨ 119

Failure of county to adopt a pension plan did not give rise to a due process claim. *SDCL 3-12-46 et seq.; U.S.C.A.*

Const.Amend. 14. Rothenberger v. Douglas County, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. *Civil Rights* ⇨ 1136

Reason or motive behind failure of county to join state retirement system did not toll 180-day limitation period for filing discrimination complaint with EEOC in order to preserve a claim under the Age Discrimination in Employment Act by county employee, who clearly knew or should have known that county had not joined the system. *SDCL 3-12-46 et seq.; Age Discrimination in Employment Act of 1967, §§ 2 et seq., 7(d), 29 U.S.C.A. §§ 621 et seq., 626(d). Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. *Civil Rights* ⇨ 1530

County had no obligation under Age Discrimination in Employment Act to adopt a pension plan for its employees. *Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.; SDCL 3-12-46 et seq. Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. *Civil Rights* ⇨ 1207

2. Exemptions

Debtors' interests in qualified profit sharing plans were not exempt under South Dakota statute exempting contributions and benefits accruing to debtor under South Dakota retirement system, where debtor's employer, under which profit sharing plan was established, was not participant in South Dakota retirement system. *SDCL 3-12-46 et seq. In re Bowen*, 1987, 80 B.R. 1012. *Exemptions* ⇨ 49

3-12-47. Definition of terms

Terms as used in this chapter, unless the context otherwise requires, mean:

- (1) Repealed by SL 2000, ch 24, § 1.
- (2) "Accumulated contributions," the sum of:

§ 3-12-47

PUBLIC OFFICERS AND EMPLOYEES

- (a) All contributions by a member, including member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
- (b) Seventy-five percent of employer contributions if the member has less than three years credited service or one hundred percent of employer contributions if the member has three years or more credited service; and
- (c) Member redeposits pursuant to § 3-12-80 and member credited service purchases pursuant to §§ 3-12-83 and 3-12-84;

all together with the effective rate of interest credited thereon.

If credited service is purchased pursuant to §§ 3-12-83 and 3-12-84, only the amount of the purchase shall be included as accumulated contributions for the purposes of a refund under this chapter;

- (2A) "Actuarial accrued liability," the present value of all benefits less the present value of future normal cost contributions;
- (3) "Actuarial equivalent," a benefit of equal value, including a three percent annual improvement, when discounted at a seven percent rate of interest and the 1971 group annuity mortality table, projected by Scale D to 1975, using a unisex rate that is fifty percent male and fifty percent female for employees and beneficiaries. However, for purposes of § 3-12-69.5, the 1971 group annuity mortality table, projected by Scale D to 1975 according to the sex of the payee, shall be used;
- (4) "Actuarial requirement," the normal cost and the interest on and amortization of the unfunded actuarial accrued liability accumulated to date over a thirty year period, all expressed in terms of a percentage of covered payroll;
- (5) "Actuarial experience analysis," a periodic report which reviews basic experience data and furnishes actuarial analysis which substantiates the assumptions adopted for the purpose of making an actuarial valuation of the system;

- (6) "Actuarial valuation," a projection of the present value of all benefits and the current funded status of the system, based upon stated assumptions as to rates of interest, mortality, disability, salary progressions, withdrawal, and retirement as established by a periodic actuarial experience analysis which takes into account census data of all active members, vested terminated members and retired members and their beneficiaries under the system;
- (6A) "Actuarial value of assets," the total assets of the system, taking market appreciation into account on a rational and systematic basis;
- (7) "Air rescue firefighters," employees of the Department of Military and Veterans Affairs who are stationed at Joe Foss Field, Sioux Falls, and who are directly involved in fire fighting activities on a daily basis;
- (8) "Annuity," payment for life; all annuities shall be payable for life unless specifically provided for otherwise;
- (9) "Approved actuary," any actuary who is a Fellow of the Society of Actuaries or who has at least fifteen years of service to major public employee funds or any firm retaining such an actuary on its staff;
- (10) "Beneficiary," the person designated by a member of the system to receive any payments after the death of such member;
- (11) "Benefits," the amounts paid to a member, or spouse and family, or beneficiary as a result of the provisions of this chapter;
- (12) "Board," the Board of Trustees of the South Dakota Retirement System;
- (13) "Campus security officers," employees of the Board of Regents whose positions are subject to the minimal educational training standards established by the law enforcement standards commission pursuant to chapter 23-3 and who satisfactorily complete the training required by chapter 23-3 within one year of employment and whose primary duty as sworn law enforcement officers is to preserve the safety of the students, faculty, staff, visitors and the property of the University of South Dakota and South Dakota State University. The em-

ployer shall file with the system evidence of the appointment as a sworn law enforcement officer at the time of employment and shall file evidence of satisfactory completion of the training program pursuant to chapter 23-3 within one year of employment;

- (14) "Child or children," the unmarried dependent children of the member, who have not passed their eighteenth birthday and each unmarried dependent child, who is totally and permanently disabled, either physically or mentally, regardless of such child's age, provided such disability occurred prior to age eighteen. It includes stepchildren and foster children who depend on the member for support and live in the household of the member in a regular parent-child relationship. It also includes any child of the member conceived during his lifetime and born after his death;
- (15) "Class A credited service," service credited as a Class A member of the system;
- (16) "Class A member," all members other than Class B members;
- (17) "Class B credited service," service credited as a Class B member of the system;
- (18) "Class B member," members who are justices, judges, state law enforcement officers, magistrate judges, municipal police officers, municipal firefighters, county sheriffs, deputy county sheriffs, and penitentiary correctional staff, parole agents, air rescue firefighters, campus security officers, court services officers, conservation officers, and park rangers;
- (19) "Classified employees," employees of public school districts who are not required by law to be certified as teachers, employees of the colleges and universities under the control of the board of regents who are not faculty or administrators and come within the provisions of chapter 3-6A, employees of public corporations, employees of chartered governmental units, and all other participating employees not elsewhere provided for in this chapter;

- (19A) “Comparable level position,” a member’s position of employment that is generally equivalent to the member’s prior position of employment in terms of required education, required experience, required training, required work history, geographic location, and compensation and benefits;
- (20) “Compensation,” gross wages paid to a member by the employer for personal services rendered during the period considered as credited service:
 - (a) Compensation includes amounts reported as wages, tips and other compensation on the member’s federal form W-2 wage and tax statement, except as otherwise excluded in this subdivision; the amount of member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71; any amount contributed to a member’s individual retirement plan which meets the requirements of section 401, 403, 408, or 457 of the Internal Revenue Code of 1986, as amended; and any amount contributed to a plan described in section 125 of the Internal Revenue Code of 1986, as amended; and any amount contributed to the system pursuant to § 3-12-83.2 in accord with § 414(h)(2) of the Internal Revenue Code as in effect on January 1, 1996;
 - (b) Compensation does not include travel, meals, lodging, moving or any other expenses incidental to an employer’s business which is reimbursed by the employer; lump sum payments for sick leave; lump sum payments for annual leave; payments for insurance coverage of any kind or any other employee benefit by an employer on behalf of an employee or an employee and dependents; any amount paid in a one time lump sum payment or over a period of time and based on or attributable to retirement or an agreement to retire in the future; payments made upon dismissal or severance; worker’s compensation payments; and payments contingent on a member terminating employment at a specified time in the future paid or payable in a lump sum or over a period of time;

- (c) Any compensation in excess of the limits established in § 401(a)(17) of the Internal Revenue Code as in effect on January 1, 2002, shall be disregarded for purposes of contributions or for benefit calculations under the system. However, the limit does not apply to compensation earned by a member if the member was employed by a participating unit on or before June 30, 1996;
- (21) "Conservation officers," employees of the Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park who are employed pursuant to § 41-2-11 and whose positions are subject to the requirements as to education and training provided in chapter 23-3;
- (22) "Contributory service," service to a participating unit during which contributions were made to a South Dakota Retirement System, which shall not include years of credited service as granted in § 3-12-84;
- (23) "Court services officers," persons appointed pursuant to § 26-7A-8;
- (23A) "Covered employment," a member's employment as a permanent full-time employee by a participating unit;
- (24) "Credited service,"
 - (a) Years of service, or fractions thereof, for which member contributions were made to the system;
 - (b) Years of noncontributory service, or fractions thereof, credited prior to July 1, 1974, previously credited under the provisions of the retirement systems consolidated pursuant to § 3-12-46;
 - (c) Any period of authorized leave of absence or sick leave with pay for which deductions for member contributions are made, deposited, and credited to the fund;
 - (d) Any period of authorized leave of absence or sick leave without pay or temporary layoff, during or for which a member obtained credit by payments to the fund made in lieu of salary deductions;
 - (e) Any period during which a member is on an authorized leave of absence to enter military service, if the

member returns to public service upon discharge from military service;

- (f) Years of service, or fractions thereof, by faculty and administrators employed by the board of regents prior to April 1, 1964, credited pursuant to §§ 3-12-69.4 and 3-12-69.5;
- (g) Years of noncontributory service, or fractions thereof, earned prior to July 1, 1967, but not credited under the South Dakota public employee retirement system as it was consolidated pursuant to § 3-12-46 because the person earned the service prior to attaining the age of thirty. The service shall be credited only to those persons who are contributing members on July 1, 1987. No service may be credited pursuant to this subsection to any member who has withdrawn the member's accumulated contributions after July 1, 1967; and
- (h) Years of noncontributory service, or fractions thereof, earned by a member from July 1, 1967, to June 30, 1974, inclusive, but not credited under the South Dakota public employee retirement system because of the age and service restrictions established under that system.

If the conditions described in § 3-12-122 occur and benefit reductions are necessary to correct those conditions, the credited service granted by this subdivision may be reduced or eliminated;

- (25) "Deputy county sheriff," an employee of a county that is a participating unit, appointed by the board of county commissioners pursuant to §§ 7-12-9 and 7-12-10, who is a permanent full-time employee and whose position is subject to the minimum educational and training standards established by the law enforcement standards commission pursuant to chapter 23-3. The term "deputy county sheriff," does not include jailers or clerks appointed pursuant to §§ 7-12-9 and 7-12-10 unless the participating unit has requested that the jailer be considered as a deputy county sheriff and the Board of Trustees has approved the request;

- (26) “Disability” or “disabled,” any medically determinable physical or mental impairment which prevents a member from performing the member’s usual duties for the member’s employer or the duties of other employment as outlined in § 3-12-141, and excludes any condition resulting from willful, self-inflicted injury;
- (27) “Effective rate of interest,” interest at an annually compounded rate to be established by the board for each fiscal year. The rate shall be no greater than ninety percent of the average ninety-one day United States treasury bill rate for the immediately preceding calendar year and in no event may the rate be more than the rate established by the board pursuant to § 3-12-121 for investment return for purposes of the actuarial valuation. If a member withdraws contributions pursuant to § 3-12-76, 3-12-76.1, or 3-12-77, or if benefits are payable under § 3-12-110, the interest shall be prorated on a monthly basis to the first of the month of the withdrawal. With respect to amounts due the system under §§ 3-12-69, 3-12-69.3, 3-12-80, 3-12-83 and 3-12-84, the effective rate of interest shall be the rate established by the board pursuant to § 3-12-121 for investment return for purposes of the actuarial valuation;
- (28) “Eligible retirement plan,” the term eligible retirement plan includes those plans described in section 402(c)(8)(B) of the Internal Revenue Code as in effect on January 1, 2002;
- (29) “Eligible rollover distribution,” any distribution to a member of accumulated contributions pursuant to §§ 3-12-76 and 3-12-76.1. The term does not include any portion of a distribution that represents contributions made to the system on an after tax basis nor distributions paid as a result of the member reaching the required beginning date;
- (30) “Employer,” the State of South Dakota and any department, bureau, board, or commission thereof, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota which elects to become a participating unit;

- (31) "Employer contributions," amounts contributed by the employer of a contributing member, excluding member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
- (32) Repealed by SL 2004, ch 41, § 6.
- (32A) "Equivalent public service," any public service other than as a justice, a judge, or a magistrate judge and comparable to class B service as defined by this section, if the service is in the employ of a public entity that is not a participating unit;
- (33) "Fiduciary," any person who exercises any discretionary authority or control over the management of the system or the management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so, or has any discretionary authority or responsibility in the administration of the system;
- (34) "Final average compensation," the highest average annual compensation earned by a member during any period of twelve consecutive calendar quarters during the member's last forty calendar quarters of membership in the system including time during which the member was not a member but for which he has received credit under the system. If the compensation received in the last calendar quarter considered exceeds a set percentage of the amount in the highest previous calendar quarter, or if the average compensation received in the last four calendar quarters exceeds a set percentage of the amount earned in the highest calendar quarter prior to the last four calendar quarters considered, only the lesser amount shall be considered and the excess shall be excluded in the computation of final compensation. Those respective set percentages are as follows:
 - (a) On or before June 30, 2004, one hundred twenty-five percent and one hundred fifteen percent;
 - (b) Between July 1, 2004, and June 30, 2005, one hundred fifteen and one hundred ten percent; and

(c) On or after July 1, 2005, one hundred five percent and one hundred five percent.

For purposes of determining final compensation periods for service separated by breaks, the service may be aggregated to constitute a period of twelve consecutive calendar quarters. The term calendar quarter means a period of three calendar months ending March thirty-first, June thirtieth, September thirtieth or December thirty-first of any year;

- (35) "Firemen," full-time municipal firemen who work at least twenty hours a week and at least six months a year. The term does not include volunteer municipal firemen;
- (36) "Full-time student," a person who is in full-time attendance as a student at an educational institution, as determined by the board in light of the standards and practices of the institution involved, except that no individual shall be considered a full-time student, if he is paid by his employer while attending such an educational institution at the request of, or pursuant to a requirement of, his employer;
- (37) "Fund," public employees retirement fund or funds established for the purposes of administration of this chapter;
- (38) "Funded ratio," the actuarial value of assets divided by the actuarial accrued liability;
- (39) "General employees," full-time municipal employees who are not firemen or policemen;
- (40) "Highest annual compensation," a member's compensation used to calculate benefits under §§ 3-12-95, 3-12-99 and 3-12-105 prior to July 1, 2004, which was the highest annual compensation earned by the member during any one of the last three years of credited service and which was not more than one hundred fifteen percent of the member's final compensation calculated as of the date of the member's death or disability;
- (41) "Improvement factor," the annual increase in the amount of the benefit allowance for each year commencing on the July first following the date on which

the benefit was first payable and equal to three and one-tenth percent compounded annually. If the first improvement is for a period of less than twelve months, the initial improvement shall be an amount equal to three and one-tenth percent prorated based on the number of months that the benefit was payable, and subsequent improvements shall be an amount equal to three and one-tenth percent;

- (42) "Law enforcement officer," an agent of the state division of criminal investigation, an officer of the South Dakota Highway Patrol, a municipal policeman, county sheriff, deputy county sheriff, or a municipal fireman;
- (42A) "Market value of assets," the total assets of the system at fair market value;
- (43) "Member," any person who is participating in and has made contributions to the system. A person is no longer a member if he withdraws his contributions at termination of employment;
- (44) "Member contributions," amounts contributed by members, including member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
- (44A) "Military service," a period of active duty with the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, or the United States Coast Guard, from which duty the member received an honorable discharge or an honorable release;
- (45) "Municipality," any incorporated municipal government under chapter 9-3 or any chartered governmental unit under the provisions of Article IX of the Constitution of the State of South Dakota;
- (46) Repealed by SL 2004, ch 42, § 8.
- (46A) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;
- (47) "Normal retirement," the termination of employment and application for benefits by a member with three or more years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h)

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of § 3–12–47(24) on or after the member's normal retirement age;

- (48) "Normal retirement age," age sixty-five for Class A credited service and for Class B credited service as a justice, judge and magistrate judge and age fifty-five for other Class B credited service;
- (49) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;
- (49A) "Other public service," service for the government of the United States, including military service; service for the government of any state or political subdivision thereof; service for any agency or instrumentality of any of the foregoing; or service as an employee of an association of government entities described in this subdivision;
- (50) "Park rangers," employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose positions are subject to the requirements as to education and training provided in chapter 23–3 and whose primary duty is law enforcement in the state park system;
- (51) "Parole agent," employees of the Department of Corrections employed pursuant to § 24–15–14 who are actually involved in direct supervision of parolees on a daily basis;
- (52) "Participating unit," the State of South Dakota and any department, bureau, board, or commission thereof, and any of its political subdivisions or any public corporation of the State of South Dakota which has employees who are members of the retirement system created in this chapter;
- (53) "Penitentiary correctional staff," the warden, deputy warden, guards, correctional supervisors, correctional officers and their immediate supervisors of the South Dakota state penitentiary and any other classification of penitentiary employees approved by the board of trustees. For purposes of administration of this chapter

final determination of penitentiary correctional staff as Class B members shall be made by the board of trustees;

- (54) "Permanent full-time employee," those employees who have been placed in a permanent classification who are customarily employed by a participating unit for twenty hours or more a week and at least six months a year. The participating unit shall decide if an employee is a permanent full-time employee and that decision is conclusive;
- (54A) "Plan year," a period extending from July first of one calendar year through June thirtieth of the following calendar year;
- (55) "Policemen," any employee in the police department of any participating municipality holding the rank of patrolman, including probationary patrolman, or higher rank and whose position is subject to the minimum educational and training standards established by the law enforcement officers standards commission pursuant to chapter 23-3. The term "policemen" does not include civilian employees of a police department nor any person employed by a municipality whose services as a policeman require less than twenty hours a week and six months a year. If a municipality which is a participating unit operates a city jail, the participating unit may request that jailers appointed pursuant to § 9-29-25 be considered policemen, subject to the approval of the board;
- (56) "Political subdivision" includes but is not limited to municipalities, school districts, counties, chartered governmental units, any public corporation or entity, and any special districts created for any governmental function;
- (56A) "Present value of all benefits," the present value of all benefits expected to be paid to all retired, terminated, and active members and beneficiaries, based on past and future credited service and future compensation increases.
- (57) "Present value of benefits earned to date," the present value of the benefits currently being paid to retired

members and their beneficiaries and the present value of benefits payable at retirement to active members, based on their earnings and credited service to date of the actuarial valuation;

- (58) "Projected compensation," a deceased or disabled member's final average compensation multiplied by the improvement factor for the period elapsed between the date of the member's death or disability, whichever occurred earlier, and the date the member would attain normal retirement age;
- (59) "Projected service," the credited service plus the service which the member would have been credited with at his normal retirement age had he continued in the system and received credit at the same rate he was credited during the year covered by the compensation that was used in the calculation of the disability or family benefit;
- (60) "Reduction age,"
 - (a) For Class A credited service, the age at which the sum of the member's age and credited service equals eighty-five. However, the reduction age may not be less than fifty-five for Class A credited service;
 - (b) For Class B credited service as a justice, judge, or magistrate judge, the age at which the sum of the member's age and credited service equals eighty. The reduction age may not be less than fifty-five for Class B credited service as a justice, judge, or magistrate judge;
 - (c) For Class B credited service other than as a justice, judge or magistrate judge, the age at which the sum of the member's age and credited service equals seventy-five. The reduction age for Class B credited service other than as a justice, judge, or magistrate judge may not be less than forty-five;
- (61) "Required beginning date," the later of April first of the calendar year following the calendar year in which the member attains age seventy and one-half or April first of the calendar year following the calendar year in which the member retires;

- (62) "Retiree," any member who retires with an annuity payable from the system;
- (63) "Retirement," the severance of a member from the employ of a participating unit with a retirement allowance payable from the system;
- (64) "Retirement allowance," the benefits that are payable upon the retirement of a member;
- (65) "Spouse," a person who was married to the member at the time of the death of the member and whose marriage was both more than twelve months prior to the death of the member and prior to his retirement;
- (66) "State employees," employees of the departments, bureaus, commissions, and boards of the State of South Dakota;
- (67) "System," the South Dakota Retirement System created in this chapter;
- (68) "Tax-qualifying purchase unit," any participating unit which elects to allow the unit's employees to purchase credited service on a tax-deferred basis by means of employer contribution agreements as outlined in §§ 3-12-83.1 and 3-12-83.2;
- (69) "Teacher," any person who has a valid teacher's certificate issued by the State of South Dakota, who is in the employ of a public school district, and shall also include the certified teachers employed by the Human Services Center, South Dakota Developmental Center—Redfield, State Penitentiary, Division of Education Services and Resources, State Training School, School for the Deaf, School for the Blind and the Visually Impaired, Children's Care Hospital and School, public nonprofit special education facilities, adjustment training centers certified by the Department of Human Services and public financed multi-district education programs;
- (70) "Terminated," complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for

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unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of health insurance coverage, severance of life insurance coverage, or severance of any other such perquisite of employment granted by the member's participating unit to an active employee;

- (71) "Trustee," a member of the board of trustees;
- (72) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets;
- (73) "Vested," the right to an annuity payable at normal retirement age from the system after three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of § 3-12-47(24), even if the member leaves the employment of a participating unit, provided that the member does not withdraw accumulated contributions. A member who leaves the employment of a participating unit is not entitled to benefits under §§ 3-12-95, 3-12-98, 3-12-99, 3-12-104, and 3-12-105.

Source: SL 1967, ch 303, § 2; SDCL § 3-12-2; SL 1968, ch 216, § 1; SL 1970, ch 25, § 1; SL 1973, ch 24, §§ 1, 2; SL 1974, ch 35, § 2; SL 1975, ch 38, § 6; SL 1975, ch 39, §§ 2, 3; SL 1976, ch 40, § 1; SL 1977, ch 28, §§ 1 to 3; SL 1977, ch 29; SL 1977, ch 31, §§ 1 to 3; SL 1978, ch 31; SL 1978, ch 32, § 5; SL 1979, ch 26, § 1; SL 1980, ch 31, § 1; SL 1982, ch 32, § 1; SL 1982, ch 33; SL 1982, ch 34, § 1; SL 1982, ch 35; SL 1983, ch 17; SL 1983, ch 18; SL 1983, ch 19, §§ 1, 2; SL 1983, ch 22, § 2; SL 1984, ch 23, § 1; SL 1985, ch 24, §§ 1, 2; SL 1986, ch 37, §§ 1-3, 11; SL 1987, ch 35; SL 1987, ch 36, §§ 1, 2; SL 1988, ch 30, §§ 1 to 3; SL 1988, ch 31; SL 1989, ch 21, § 40; SL 1989, ch 38, §§ 5, 9; SL 1989, ch 238, § 3; SL 1990, ch 36; SL 1991, ch 29, §§ 1, 2; SL 1991, ch 30; SL 1992, ch 30, § 1; SL 1992, ch 34, §§ 1, 2; SL 1993, ch 38, §§ 1, 2; SL 1993, ch 39, § 1; SL 1993, ch 40; SL 1993, ch 41; SL 1993, ch 42, §§ 1-3; SL 1993, ch 44, §§ 2, 3; SL 1994, ch 32, §§ 1, 2; SL 1994, ch 34, §§ 1, 2; SL 1995, ch 18, §§ 1, 2, 4; SL 1995, ch 23, § 1; SL 1995, ch 24, §§ 1, 11, 15; SL 1996, ch 29, § 1; SL 1996, ch 30, §§ 1, 5; SL 1997, ch 25, § 1; SL 1997, ch 26, § 1; SL 1997, ch 27, § 1; SL 1998, ch 15, §§ 1, 2, 3, 4, 5; SL 1998, ch 16, § 1; SL 1998, ch 17, § 1; SL 1998, ch 17, § 2; SL 1998, ch 18, § 1; SL 1998, ch 19, § 1; SL 1998, ch 110, § 2; SL 1999, ch 14, §§ 1, 2; SL 1999, ch 15, § 1; SL 2000, ch 24, §§ 1, 2; SL 2002, ch 22, §§ 1, 2; SL 2004, ch 35, § 1; SL 2004, ch 36, §§ 1, 2; SL 2004, ch 37, §§ 1, 2; SL 2004, ch 38, § 7; SL 2004, ch 40, §§ 5 to 7; SL 2004, ch 42, §§ 3 to 11; SL 2005, ch 24, §§ 1, 2; SL 2006, ch 17, § 1.

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Note 4

Commission Note

Section 1A of chapter 39 of the 1993 Session Laws provides that changes in the definition of compensation pursuant to SL 1993, ch 39, § 1 do not apply to compensation received pursuant to contracts entered into and effective prior to January 1, 1993.

Historical and Statutory Notes

SL 1998, ch 17, § 4, provides:

"Application of the improvement factor as amended in section 1 of this Act shall apply only to the benefits which are first payable after July 1, 1998."

Notes of Decisions

Benefit 3

Class B members 4

Disability 5

Fiduciary duties 2

Service credit 1

1. Service credit

Retirement bonus acceptance in installments does not entitle member to additional credited service beyond his retirement date. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

Where employee received credit under 1967 act for prior service which gave him a vested right in portion of benefits, he was not deprived of the vested right by amendment under which his prior service did qualify for credit. Op.Atty.Gen. Opinion No. 80-39, 1980 WL 119214.

Retirement bonus, either as lump sum or in installments, is not 'compensation' as defined in subdivision (20) of this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

2. Fiduciary duties

As a fiduciary, Board of Trustees of state Retirement System had a duty to act in the highest good faith and to refrain from obtaining any undue advantage over members. SDCL 3-12-47(33). O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ⇌ 64.1(1)

When a member's request can be decided by the Board of Trustees of state Retirement System in one of several ways, each authorized by statute, the Board's decision must be consistent with its fiduciary duty to that member; if one decision would be consistent with Board's fiduciary duties but a second decision would not be, and Board makes the second decision, it is proper for the circuit court, on appeal, to review the Board's decision in light of the Board's fiduciary duty to the member. SDCL 3-12-47(33). O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ⇌ 64.1(1); States ⇌ 64.1(7)

In dealing with a member, Board of Trustees of state Retirement System had a duty to act primarily for the benefit of the member. SDCL 3-12-47(33). O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ⇌ 64.1(1)

3. Benefit

Terms "benefit" and "benefits" in the retirement provisions of parties' divorce settlement agreement was not ambiguous, and, thus, trial court was not warranted in finding there was never any agreement on division of husband's retirement fund and determining wife's entitlement to portion of the fund outside contractual provision within the agreement; although word "benefit" was not described within the agreement, statute governing South Dakota Retirement System allowed husband upon retiring from system to claim his retirement "benefits" in the form of a monthly payment, which he did, and provision in settlement agreement entitled wife to benefits whenever husband should draw on his benefits. SDCL 3-12-47(11), 3-12-112. Divich v. Divich, 640 N.W.2d 758, 2002 SD 24. Husband And Wife ⇌ 279(2)

4. Class B members

Division of criminal investigation agents assigned to the drug unit are class B members, because they are given law enforcement authority. Op.Atty.

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Note 4

Gen. Opinion No. 80-28, 1980 WL 119203.

5. Disability

State Retirement System Board's decision to deny disability benefits to employee, formerly employed in plumbing and heating maintenance at state college prior to injury to right shoulder, based on employee's ability to perform duties of administering preventative maintenance planning program on campus was both clearly erroneous and arbitrary and capricious, where preventative maintenance position was merely part time and employee received less than one half remuneration he received prior to his injury, so that position was not of comparable level, and where employee was not qualified by education, training, and experienced to perform necessary duties of preventative maintenance position. SDCL 3–12–46 et seq., 3–12–47(18). Appeal of Templeton, 1987, 403 N.W.2d 398. States ⇐ 64.1(3)

Board's finding that 61-year-old school board employee, who had worked as teacher, assistant principal, and principal and who due to absences caused by illness was reassigned as

teacher but her contract was not renewed because her excessive absences were disruptive, was not entitled to disability benefits was not sustained by "substantial evidence." SDCL 3–12–46 et seq., 3–12–47(18), 3–12–98. Gourley v. Board of Trustees of South Dakota Retirement System, 1980, 289 N.W.2d 251. Schools ⇐ 146(7)

Statute defining disability for purposes of state retirement system should be read to require member seeking disability benefits to first satisfy the test of inability to perform usual duties and then satisfy the test of performance of duties of the position of comparable level. SDCL 3–12–47(18), 3–12–98. Gourley v. Board of Trustees of South Dakota Retirement System, 1980, 289 N.W.2d 251. Schools ⇐ 146(3)

Record established that school employee who had served as teacher, assistant principal and principal and who had been transferred to teacher duties because of absenteeism due to illness and whose contract as teacher was not renewed was entitled to disability benefits. SDCL 3–12–47(18), 3–12–98. Gourley v. Board of Trustees of South Dakota Retirement System, 1980, 289 N.W.2d 251. Schools ⇐ 146(7)

3–12–47.1. Effect of credited service provision

Any increase in a retired member's benefit as a result of the provisions of the 1997 amendment to subdivision 3–12–47(24) shall be prospective only from July 1, 1997.

Source: SL 1997, ch 25, § 2.

3–12–47.2. Refund for purchase cost of noncontributing service

Any member who, pursuant to the provisions of § 3–12–83, has purchased a portion or all of the member's noncontributory service described in subsection (h) of subdivision § 3–12–47(24) is entitled to a refund of such purchase cost.

Source: SL 1997, ch 25, § 3.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-47.3. Date of application of prorated payment of interest

Application of the prorated payment of interest as amended in subdivision 3-12-47(27) applies only to amounts which are first payable after July 1, 1998.

Source: SL 1998, ch 16, § 2.

3-12-48. Board of Trustees created—Composition

There is created a governing authority of the system to consist of a board known as the Board of Trustees. Voting representation on the board shall be the following:

- (1) Two state employee members;
- (2) Two teacher members;
- (3) A participating municipality member;
- (4) A participating county member;
- (5) A participating classified employee member;
- (6) A current contributing Class B member other than a justice, judge, or magistrate judge;
- (7) A justice, judge, or magistrate judge;
- (8) One head of a principal department established pursuant to § 1-32-2, or one head of a bureau under the Department of Executive Management established pursuant to § 1-33-3 appointed by the Governor;
- (9) An individual appointed by the Governor;
- (10) A county commissioner of a participating county;
- (11) A school district board member;
- (12) An elected municipal official of a participating municipality;
- (13) A retiree; and
- (14) A faculty or administrative member employed by the Board of Regents and not subject to the provisions of chapter 3-6A.

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A representative of the State Investment Council shall serve as an ex officio nonvoting member.

Source: SL 1967, ch 303, § 3; SDCL § 3-12-4; SL 1968, ch 216, § 1; SL 1973, ch 25; SL 1974, ch 35, § 3; SL 1975, ch 38, § 7; SL 1976, ch 39, § 8; SL 1977, ch 28, § 4; SL 1979, ch 27, § 1; SL 1994, ch 33.

Commission Note

SL 2003, ch 272 (Ex. Ord. 03-1) § 82 changed the name of the Office of executive management to the Department of Executive Management. The Code Commission has implemented this change in this section.

Library References

States ⌘45, 48.

Westlaw Key Number Searches:
360k45; 360k48.
C.J.S. States §§ 79, 82 to 83, 91, 136.

Notes of Decisions

Voting rights 1

1. Voting rights

Acting commissioner of personnel has vote at board of trustees meetings. Op. Atty.Gen. Opinion No. 77-47, 1977 WL 35985.

3-12-49. Election of trustees—Terms of office

Each group of retirement system members who are vested or are currently contributing or employers as set out in § 3-12-48 shall elect their own trustee or trustees in a separate election. The trustees shall promulgate rules and regulations pursuant to chapter 1-26 to carry out such elections. The regular term of office of a trustee shall be four years with three terms expiring on June thirtieth of each year and two additional terms to expire on June thirtieth every fourth year. The appointees of the Governor shall serve at the pleasure of the Governor. The term of the representative of the Investment Council shall be one year and he shall be appointed by the Investment Council. A trustee shall continue to serve until his successor has been designated and has qualified.

Source: SL 1959, ch 84, § 6; SDC Supp 1960, § 15.3910; SL 1961, ch 255, §§ 5, 6; SL 1965, ch 220, §§ 5, 6; SL 1967, ch 303, § 3; SDCL §§ 3-12-4, 9-15-4 (5), 9-15-5, 13-45-9; SL 1968, ch 216, § 1; SL 1970, ch 106, § 1; SL 1973, ch 25; SL 1974, ch 35, §§ 5 to 7; SL 1976, ch 41; SL 1977, ch 28, § 14; SL 1979, ch 27, § 2.

Administrative Code References

State retirement system
Contest of election of board, see
S.D. Admin. R. 62:01:05:14.
Procedure for filling a vacancy on
the board, see S.D. Admin. R.
62:01:07:05.

Library References


States ⌘46.

Westlaw Key Number Search:
360k46.
C.J.S. States §§ 61, 80, 84, 102.

3-12-50. Oath of office of trustees

Each trustee within ten days after his appointment or election shall take and file in the Office of the Secretary of State the oath required by § 3-1-5.

Source: SL 1959, ch 84, § 7; SDC Supp 1960, § 15.3911; SL 1961, ch 255, § 8; SL 1967, ch 303, § 3; SDCL §§ 3-12-5, 9-15-8, 13-45-10; SL 1968, ch 216, § 1; SL 1974, ch 35, § 8.

Library References C.J.S. States §§ 83, 91.
States  48.
Westlaw Key Number Search:
360k48.

3-12-51. Compensation and expenses of trustees


The trustees shall receive per diem compensation and allowable expenses for their services as trustees as are fixed pursuant to § 4-7-10.4.

Source: SL 1967, ch 303, § 3; SDCL § 3-12-6; SL 1968, ch 216, § 1; SL 1974, ch 35, § 9.

3-12-52. Meetings of board—Chairman and vice-chairman— Votes required for decision

The Board of Trustees shall meet at least twice each year, and shall adopt its own rules of procedure. A majority of trustees shall constitute a quorum. At the first meeting of each fiscal year the board shall elect from their membership a chairman and a vice-chairman. At least eight concurrent votes shall be required for a decision by the board for any of its meetings.

Source: SL 1959, ch 84, §§ 9, 10; SDC Supp 1960, §§ 15.3913, 15.3914; SL 1961, ch 255, §§ 9 (a), 10; SL 1963, ch 285; SL 1965, ch 220, §§ 7, 8; SL 1967, ch 303, § 3 (1), (2); SDCL §§ 3-12-7, 3-12-8, 9-15-10, 9-15-17, 13-45-13, 13-45-14; SL 1968, ch 216, § 1; SL 1974, ch 35, § 10.

Cross References Meetings of public agencies, public access, see § 1-25-1 et seq.
Library References States  67.
Westlaw Key Number Search:
360k67.

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PUBLIC OFFICERS AND EMPLOYEES

C.J.S. States §§ 121, 136 to 138, 140.

3-12-53. Disqualification of trustee by loss of qualifying status—Filling of vacancy

In the event that an employee trustee ceases to be a member, or any nonemployee elected trustee no longer serves in the capacity that qualified him for membership on the Board of Trustees, he shall be considered to have resigned from the board, and the board shall select a trustee to serve until a replacement trustee can be elected at a regular election to fill the remaining term. The election shall occur no more than eighteen months after the vacancy occurs. If the election of a replacement trustee coincides with the election of another trustee representing the same group, there shall be only one ballot. The candidate receiving the greatest number of votes shall fill the full term, and the candidate receiving the second greatest number of votes shall be the replacement trustee. The replacement trustee shall take office on July first immediately following his election.

Source: SL 1959, ch 84, § 8; SDC Supp 1960, § 15.3912; SL 1961, ch 255, § 7; SDCL §§ 9-15-6, 13-45-12; SL 1970, ch 106, § 2; SL 1974, ch 35, § 11; SL 1982, ch 32, § 2.

Administrative Code References

State retirement system, procedure for filling a vacancy on the board, see S.D. Admin. R. 62:01:07:05.

Westlaw Key Number Search:

360k51.

C.J.S. States §§ 61, 87, 92.

Library References

States ⌘51.

3-12-54. System managed by board—Standard of conduct—Legal advice

The system shall be under the Board of Trustees. The Board of Trustees shall be held to the standard of conduct of a fiduciary and shall carry out its functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The attorney general is the legal adviser to the board.

Source: SL 1967, ch 303, § 3; SDCL § 3-12-4; SL 1968, ch 216, § 1; SL 1973, ch 2, § 22 (a) to (d); SL 1973, ch 25; SDCL Supp, §§ 3-12-4.1,

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3-13-4.1, 13-45-8.1, 16-8-7.1; SL 1974, ch 35, § 12; SL 1979, ch 27, § 3; SL 1992, ch 30, § 2.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-55. Appointment and term of administrator—Salary— Employment of personnel—Bond of administrator

The Board of Trustees shall appoint an administrator, qualified by training and experience, to serve at the pleasure of the Board of Trustees. The annual salary of the administrator may be adjusted annually by the same rate appropriated as the across-the-board increase to base salaries of state employees under the General Appropriations Act in each corresponding year.

Before May first of each year, the board shall recommend any additional salary adjustment above the across-the-board increase for the administrator for the upcoming fiscal year. This salary adjustment is not effective unless it is approved by a majority vote of the members of the Retirement Laws Committee. The administrator may hire additional employees as may be required to transact the business of the retirement system and shall fix the remuneration for such services. The board shall require the bonding of the administrator in an amount set by the board which shall be included under the state employees' blanket bond. The premium may be charged to the fund.

Source: SL 1967, ch 303, § 3 (4), (5); SDCL §§ 3-12-9, 3-12-10; SL 1968, ch 216, § 1; SL 1974, ch 35, § 13; SL 1979, ch 27, § 4; SL 1980, ch 32; SL 1995, ch 17; SL 1998, ch 20, § 1.

Cross References

Group health and life insurance
duties, see § 3-12A-3.
Official bonds of state employees,
blanket or individual bonds, see
§ 3-5-5.1.

Library References

States § 46 to 48.
Westlaw Key Number Searches:
360k46 to 360k48.
C.J.S. States §§ 61, 80, 83 to 84, 91,
102.

3-12-56. Applications to administrator for membership or benefits

Applications for membership for new or additional benefits, credited service, or benefit payments which may be granted by

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the Board of Trustees shall be made to the administrator on forms approved by the board.

Source: SL 1974, ch 35, § 14.

Library References

Officers and Public Employees
 ↗101.5(2).
Westlaw Key Number Search:
 283k101.5(2).
C.J.S. Officers and Public Employees
 § 321.

Notes of Decisions

Refund requests 1

1. Refund requests

Board of Trustees of state Retirement System had statutory authority to con-

sider and decide members' requests for refunds, and thus, former members' requests for a refund of employer contributions was fully within the scope of System Administrator's statutory authority to make a determination. SDCL 3-12-56, 3-12-57, 3-12-58. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ↗ 64.1(4)

3-12-57. Approval of applications by administrator—Questioned applications forwarded to board—Board procedure—Review

Any applications which on their face appear valid and to which the applicant is obviously entitled shall be approved by the administrator. If the administrator has any reason to question an application he shall forward it to the Board of Trustees who shall afford the applicant an opportunity for hearing upon reasonable notice. Action taken by the board on applications shall be treated as a contested case with right of review authorized by chapter 1-26.

Source: SL 1974, ch 35, § 14; SL 1980, ch 26, § 17.

Cross References

Contested cases, procedure before administrative agencies, see §§ 1-26-16 to 1-26-30.

Library References

Officers and Public Employees
 ↗101.5(2).
Westlaw Key Number Search:
 283k101.5(2).
C.J.S. Officers and Public Employees
 § 321.

Notes of Decisions

Refund requests 1

1. Refund requests

Board of Trustees of state Retirement System had statutory authority to consider and decide members' requests for refunds, and thus, former members' requests for a refund of employer contributions was fully within the scope of System Administrator's statutory authority to make a determination. SDCL 3-12-56, 3-12-57, 3-12-58. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ↗ 64.1(4)

3–12–58. Rules for administration

The Board of Trustees may adopt such rules as may be necessary to establish uniform procedures for the administration of the system and to insure uniformity of application of the provisions of this chapter. Such rules may be adopted in the following areas:

- (1) Membership and class of membership;
- (2) Contributions and the collection thereof;
- (3) Criteria and procedures for the determination of applications for, and payment of disability allowances;
- (4) Procedure for applications for benefits and the payment of benefits;
- (5) Election of trustees; and
- (6) Procedure for the conduct of meetings of the board.

The rules shall be adopted pursuant to chapter 1–26 and shall be in accordance with the provisions of this chapter.

Source: SL 1967, ch 303, § 3 (9); SDCL § 3–12–11; SL 1968, ch 216, § 1; SL 1974, ch 35, § 15; SL 1983, ch 22, § 1.

Administrative Code References

State retirement system, see S.D. Admin. R. 62:01:01:01 et seq.

Library References

Officers and Public Employees
 ⇨101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).
 C.J.S. Officers and Public Employees
 §§ 311 to 320.

Notes of Decisions

Refunds 1

1. Refunds

Board of Trustees of state Retirement System had statutory authority to consider and decide members' requests for refunds, and thus, former members' requests for a refund of employer contributions was fully within the scope of System Administrator's statutory authority to make a determination. SDCL 3-12-56, 3-12-57, 3-12-58. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ⇨ 64.1(4)

3–12–58.1. Confidentiality of records—Exceptions

Any information contained in any record pertaining to a member of the system is confidential and shall be used for the sole purpose of carrying into effect the provisions of this chapter. Any record containing the information is not open to inspection by any person or entity except the member, the board, the employees of the system, or the member's employer.


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The information and records may be released to the member or with the member's consent. The information and records may also be released pursuant to a court order or subpoena.

Source: SL 2002, ch 22, § 5.

Library References

Records  58.

Westlaw Key Number Search:
326k58.

C.J.S. Records §§ 104 to 105, 107 to 110.

3-12-59. Record of board proceedings—Biennial report

The Board of Trustees shall keep complete records of their proceedings which shall be open to public inspection. The board shall prepare a biennial written report setting forth its financial information for the previous fiscal period including the amount of the accumulated cash and securities of the system, and the last actuarial balance sheet. A copy of such report shall be furnished to the fiscal officer of any participating unit, the auditor general, and the director of the Legislative Research Council.

Source: SL 1967, ch 303, § 3 (11); SDCL § 3-12-12; SL 1968, ch 216, § 1; SL 1974, ch 35, § 16; SL 1977, ch 28, § 5.

Cross References


Public records and files, access by the public, see § 1-27-1 et seq.

3-12-60. Business name of system—Treasurer

The Board of Trustees shall transact all business and hold all cash in the name of the South Dakota Retirement System. The state treasurer shall be the treasurer of the system.

Source: SL 1967, ch 303, § 3 (3); SDCL § 3-12-13; SL 1968, ch 216, § 1; SL 1974, ch 35, §§ 1, 17.

Library References

Officers and Public Employees  101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-61. Expense fund continued—Transfer from retirement system fund—Report of budget—Appropriation and disbursement for expenses

The South Dakota Retirement System expense fund is hereby continued and the Board of Trustees is hereby authorized to transfer from the South Dakota Retirement System fund an annual amount not to exceed three percent of the annual contributions received by the system, and the moneys so transferred are hereby appropriated for the payment of the administrative costs of the system, provided that the board shall report its proposed annual budget to the Legislature for its approval, within the budget report of the Department of Labor. Expenditures from all funds shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the administrator of the system.

Source: SL 1967, ch 303, § 12; SDCL § 3-12-42; SL 1968, ch 216, § 1; SL 1970, ch 25, § 12; SL 1974, ch 35, § 18; SL 1976, ch 42.

3-12-62. Employees included as members of system

All of the following permanent full-time employees are included as members in the system:

- (1) All state employees;
- (2) All teachers;
- (3) All justices, judges, and law-trained magistrates;
- (4) All policemen and firemen of participating municipalities;
- (5) All general employees of participating municipalities;
- (6) All employees of participating counties;
- (7) All classified employees of school districts that are participating with their classified employees;
- (8) All employees of the Board of Regents;
- (9) All state law enforcement officers.

Source: SL 1957, ch 142, § 8; SL 1959, ch 84, § 15; SDC Supp 1960, §§ 15.3919 (1), 44.06A08; SL 1961, ch 255, § 17; SL 1963, ch 86, § 1; SL 1965, ch 220, § 13; SL 1967, ch 303, § 4; SDCL §§ 3-12-19, 3-13-12, 9-15-25, 9-15-26, 13-45-21; SL 1968, ch 56, § 1; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-19.2; SL 1974, ch 35, § 19; SL 1975, ch 38, § 8; SL 1976, ch 39, § 7; SL 1981, ch 13, § 1.

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PUBLIC OFFICERS AND EMPLOYEES

Cross References

Executive reorganizations, effect on employees' rights, see § 1-32-12.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Notes of Decisions

Participating employees 1

1. Participating employees

When participation in SDMRS is elected by local government, participation for affected employees is mandatory; city may not specify which employees may participate nor terminate participation. Op.Atty.Gen. Opinion No. 81-19, 1981 WL 157027.

3-12-62.1. Department of Labor employees—Membership in system—Benefits and credited service

All personnel hired on or after July 1, 1980 by the divisions of the Department of Labor established by §§ 61-2-10 and 61-2-10.1 shall be members of the system. Any individual so employed prior to July 1, 1980 may elect to become a member of the system, if that election is made prior to July 1, 1981. Benefits accrued to a member prior to the date of such election shall be continued and shall not be considered as other public benefits, as defined in subdivision 3-12-47(50), for the purposes of calculating or offsetting any benefit resulting from participation in the system. Credited service earned under the retirement system provided by chapter 61-2 may not be counted for the purpose of calculation of benefits under chapter 3-12. For any individual who elects to be a member of the system pursuant to this section, credited service earned under the retirement system provided by chapter 61-2 shall be counted for the purpose of vesting under chapter 3-12 and for the eligibility requirements under §§ 3-12-95 and 3-12-98, provided that contributions made to the system provided under chapter 61-2 are not withdrawn.

Source: SL 1980, ch 33, § 2.

Library References

States § 64.1(3).
Westlaw Key Number Search:
360k64.1(3).

C.J.S. States §§ 113 to 116, 118.

3-12-62.2. Rapid City firemen—Membership in system—Benefits and credited service

On July 1, 1982, all employees of the municipality of Rapid City who are participants in the municipality of Rapid City

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firemen pension fund on June 30, 1982, and all retirees receiving benefits from that fund shall become members of the system. Each employee shall receive credited service under the system for all service earned under the municipality of Rapid City firemen pension fund.

Source: SL 1982, ch 37, § 1; SL 1992, ch 60 § 2.

Library References	C.J.S.	Municipal	Corporations
Municipal Corporations ¶200(2).	§§	574,	589.
Westlaw Key Number Search:			
268k200(2).			

3–12–62.3. Rapid City firemen—Retirement benefits—Normal retirement age

Upon retirement, each employee described in § 3–12–62.2 shall receive the greater of:

- (1) His retirement allowance calculated under this chapter;
or
- (2) The retirement allowance calculated under the municipality of Rapid City firemen pension fund based on credited service up to June 30, 1982, and compensation up to June 30, 1982.

The normal retirement age of each such employee shall be fifty-five.

Source: SL 1982, ch 37, § 2; SL 1992, ch 60, § 2.

Library References	C.J.S.	Municipal Corporations §	587.
Municipal Corporations ¶200(7).			
Westlaw Key Number Search:			
268k200(7).			

3–12–62.4. Rapid City firemen—Payments from public employees retirement fund

The benefits of the retirees described in § 3–12–62.2 who are entitled to receive benefits from the municipality of Rapid City firemen pension fund on July 1, 1982, shall be paid from the fund established by this chapter.

Source: SL 1982, ch 37, § 3; SL 1992, ch 60, § 2.

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Library References

Municipal Corporations ⌘200(4).

Westlaw Key Number Search:
268k200(4).

C.J.S. Municipal Corporations
§§ 577, 596.

3-12-62.5. Rapid City firemen—Payments by Rapid City

The municipality of Rapid City shall pay to the system an amount equal to the present value of all benefits earned by employees described in § 3-12-62.2 up to July 1, 1982, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1980. That amount shall be determined as of the close of business on July 1, 1982, by the system's actuary. Any amount to be paid to the system by the municipality of Rapid City which exceeds the value of the assets of the municipality of Rapid City firemen pension fund, determined as of the date of transfer of the assets, may be paid in periodic installments as provided in § 3-12-69.

Source: SL 1982, ch 37, § 4; SL 1992, ch 60, § 2.

Library References

Municipal Corporations ⌘200(4).

Westlaw Key Number Search:
268k200(4).

C.J.S. Municipal Corporations
§§ 577, 596.

3-12-62.6. Rapid City firemen—Crediting of transfers from Rapid City pension fund

All amounts transferred to the system from the municipality of Rapid City firemen pension fund which, under the fund, were credited to the accounts of individual employees shall be considered employee contributions under this chapter.

Source: SL 1982, ch 37, § 5; SL 1992, ch 60, § 2.

Library References

Municipal Corporations ⌘200(4).

Westlaw Key Number Search:
268k200(4).

C.J.S. Municipal Corporations
§§ 577, 596.

3-12-62.7. Repealed by SL 1989, ch 38, § 6

Historical and Statutory Notes

The repealed section related to Rapid City firemen, persons hired after July 1, 1982.

3-12-62.8. Conservation officers—Calculation of benefits

For purposes of determining the retirement benefits of conservation officers, for credited service earned prior to July 1, 1983, benefits shall be calculated pursuant to § 3-12-91 and for credited service earned after June 30, 1983, benefits shall be calculated pursuant to § 3-12-92. For purposes of benefits earned prior to July 1, 1983, conservation officers shall have a normal retirement age of sixty-five. For purposes of benefits earned after June 30, 1983, conservation officers shall have a normal retirement age of fifty-five.

Source: SL 1983, ch 19, § 3; SL 1989, ch 38, § 7.

Library References

C.J.S. States §§ 113 to 116, 118.

States ⌘64.1(3).

Westlaw Key Number Search:
360k64.1(3).**3-12-62.9. Benefits of conservation officers employed by Department of Game, Fish and Parks, Division of Custer State Park, and park rangers—Credited service**

To determine the retirement benefits of conservation officers employed by the Department of Game, Fish and Parks, Division of Custer State Park, and park rangers, for credited service earned prior to July 1, 1995, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1995, the benefits shall be calculated pursuant to § 3-12-92.

Source: SL 1995, ch 18, § 3.

Library References

C.J.S. States §§ 113 to 116, 118.

States ⌘64.1(3).

Westlaw Key Number Search:
360k64.1(3).**3-12-62.10. Watertown firemen pension fund members—Credited service**

On July 1, 1995, all members of the city of Watertown firemen pension fund as of June 30, 1995, including all retirees and benefit recipients, shall become members of the system. Each individual shall receive credited service under the system for all service earned under the city of Watertown firemen pension fund.

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Source: SL 1995, ch 19, § 1.

Library References

Municipal Corporations ⌘200(2).

Westlaw Key Number Search:
268k200(2).

C.J.S. Municipal Corporations
§§ 574, 589.

3-12-62.11. Watertown firemen—Benefits paid from the system—Minimum benefit

Each individual described in § 3-12-62.10 shall receive the same benefit under the form of annuity provided by the city of Watertown firemen pension fund in effect on June 30, 1995, which benefit shall be improved on July 1, 1995, and thereafter in accordance with § 3-12-88. The benefits of individuals described in § 3-12-62.10 who are entitled to receive benefits from the city of Watertown firemen pension fund as of July 1, 1995, shall be paid from the fund established by this chapter and funded pursuant to §§ 3-12-62.12 and 3-12-62.13.

Firemen who are not retired on July 1, 1994, shall be guaranteed a minimum benefit equal to the accrued benefit under the city of Watertown firemen pension fund as of July 1, 1994. If the minimum benefit is paid in lieu of a benefit under chapter 3-12, the minimum benefit may not be improved annually as provided in § 3-12-88 and the member is not entitled to benefits pursuant to § 3-12-94 or subdivision 3-12-95(4).

Source: SL 1995, ch 19, § 2.

Library References

Municipal Corporations ⌘200(7).

Westlaw Key Number Search:
268k200(7).

C.J.S. Municipal Corporations § 587.

3-12-62.12. Watertown firemen—Payments by Watertown

The city of Watertown shall pay to the system an amount equal to the present value of all benefits earned by individuals described in § 3-12-62.10 prior to July 1, 1995, and multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1994. The amount shall be determined on July 1, 1995, by the system's actuary. Any amount to be paid to the system by the city of Watertown which exceeds the value of the assets of

the city of Watertown firemen pension fund, as determined as of the date of transfer, shall be paid pursuant to the provisions of § 3-12-69.

Source: SL 1995, ch 19, § 3.

<p>Library References Municipal Corporations ⌘200(4). Westlaw Key Number Search: 268k200(4).</p>	<p>C.J.S. Municipal Corporations §§ 577, 596.</p>
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3-12-62.13. Watertown firemen—Crediting transfers from city of Watertown firemen pension fund

All amounts transferred to the system from the city of Watertown firemen pension fund which under the city of Watertown firemen pension fund were credited to the accounts of individual employees are considered member contributions under this chapter.

Source: SL 1995, ch 19, § 4.

<p>Library References Municipal Corporations ⌘200(4). Westlaw Key Number Search: 268k200(4).</p>	<p>C.J.S. Municipal Corporations §§ 577, 596.</p>
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3-12-63. Officers and employees excluded from membership in the system

Membership in the system shall exclude the following:

- (1) All elective officers except justices and judges, unless such person elects and is otherwise qualified to become a member of the system;
- (2) All personnel in the Department of Labor who were employed prior to July 1, 1980, and who elect to remain participants in the retirement system provided by chapter 61-2;
- (3) State Cement Plant employees;
- (4) The governing body of any participating county, municipality, or other political subdivision.

Source: SL 1967, ch 303, § 4; SDCL § 3-12-20; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-20.1; SL 1973, ch 24, § 3; SL 1974, ch 35, § 20; SL 1975, ch 38, § 9; SL 1975, ch 39, § 4; SL 1976, ch 39, § 6; SL 1977, ch 30, § 1; SL 1980, ch 33, § 1.

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PUBLIC OFFICERS AND EMPLOYEES

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-64. Elective officers permitted to join system—Service credited

A full-time elective officer if he is not a contributing member of the system at the date the participating unit enters the system or on July 1, 1974, and is not otherwise excluded may elect to become a member, provided, however, his credited service shall be limited to service for which contributions were made.

Source: SL 1967, ch 303, § 4; SDCL § 3-12-21; SL 1968, ch 216, § 1; SL 1970, ch 25, § 3; SL 1974, ch 35, § 21.

Administrative Code References

State retirement system, elected official's period of participation, see S.D. Admin. R. 62:01:07:11.

Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Library References

Officers and Public Employees
⇒101.5(1).

3-12-65. Continuation of previously established retirement plan of political subdivision or public corporation—Vote of employees required to participate in consolidated system

Any retirement plan of a political subdivision or public corporation created prior to July 1, 1974, may continue to operate that plan unless accepted in the system created by this chapter. Notwithstanding the provisions of this section and § 3-12-67, in no event, shall employees of such retirement plan be accepted as a participating unit unless the members of such retirement plan vote by a two-thirds majority to become members of the system created by this chapter.

Source: SL 1974, ch 35, § 23.

Administrative Code References

State retirement system, deferred compensation plan, participation by political subdivisions, see S.D. Admin. R. 62:03:02:01.

Library References

Municipal Corporations ⇒220(9).
Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Searches:
268k220(9); 283k101.5(1).

C.J.S. Municipal Corporations §§ 649
to 660.

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-66. Newly established retirement plans of political subdivisions and public corporations to participate in consolidated system

No political subdivision or public corporation, including municipalities, counties, and chartered governmental units, may establish any retirement plan unless such political subdivision or public corporation becomes a participating unit of the system created in this chapter.

Source: SL 1974, ch 35, § 24.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

ject to this section. Op.Atty.Gen. Opinion No. 82-62 (Nov. 17, 1982), 1982 WL 188072.

3. Transfer of nonvested funds

Where city employees became employees of regional airport authority, a separate public body, the city had no authority to transfer any nonvested funds on behalf of the employees to the airport authority, but the employees would be entitled to a refund of members' contributions with or without interest as the city determined by the ordinance passed in accordance with § 9-16-3. Op.Atty.Gen. Opinion No. 86-39 (Sept. 30, 1986), 1986 WL 288780.

Notes of Decisions

Tax sheltered annuities 1

Transfer of nonvested funds 3

Water use districts 2

1. Tax sheltered annuities

Tax sheltered annuities under §§ 3-10-4 to 3-10-7 do not violate this section. Op.Atty.Gen. Opinion No. 77-9, 1977 WL 35947.

2. Water use districts

Water user districts established under chapter 46-16 [chapter 46A-9] are sub-

3-12-67. Election by political subdivision or public corporation to participate in consolidated system

Any political subdivision and any public corporation, including municipalities, counties and chartered governmental units in the State of South Dakota, may become a participating unit by a duly passed resolution of its governing body. Any political subdivision not participating in the system on June 30, 1985, may become a participating unit for only its class A members or only its class B members, or for both classes together. If a political subdivision elects to participate for either one class of members or for both classes, all permanent full-time employees in that class or classes shall become members.

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Source: SL 1961, ch 255, § 16; SL 1965, ch 220, § 12; SL 1967, ch 303, § 10; SDCL §§ 3-12-36, 9-15-24; SL 1968, ch 216, § 1; SL 1974, ch 35, § 25; SL 1985, ch 25.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-68. Coverage of joint employees of participating and nonparticipating political subdivisions

In the event a participating unit and a nonparticipating South Dakota political subdivision or public corporation enter into an agreement to provide certain public services on a joint basis, they may agree to consider persons employed pursuant to such agreement as if they were solely employees of the participating unit for the exclusive purposes of the system created in this chapter. The total compensation paid a person because of such employment shall be considered compensation paid him by the participating unit and services rendered by such person because of such employment shall be considered service rendered by him to the participating unit.

Source: SL 1973, ch 51, § 1; SDCL Supp, § 9-15-25.1; SL 1974, ch 35, § 26.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-69. Accrued benefit deposit required when political subdivision or public corporation joins consolidated system—Participation by employees—Deferred payment of deposit

Employees of an eligible political subdivision or public corporation not participating in the systems consolidated into the system created by this chapter, may become a participating unit in the system if the unit commits to deposit an amount equal to the present value of the benefits earned to date, based on the employee's prior service to the unit to be covered by the system. The expense of the actuarial determination of this amount shall be borne by the applicant. All eligible employees of an appli-

cant shall participate in the system upon admission. If the unit is unable to deposit this amount in a single sum, the unit shall have the option to pay the amount by periodic level installments over a period up to twenty years, the value of which, when discounted for interest at the effective rate, is equal to the amount due at the date of participation.

Source: SL 1967, ch 303, § 10; SDCL § 3–12–36; SL 1968, ch 216, § 1; SL 1974, ch 35, § 27; SL 2004, ch 42, § 12.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–69.1. Board of Regents employees—Definition of balances

Terms as used in §§ 3–12–69.1 to 3–12–69.5, inclusive, unless the context otherwise requires, shall mean:

- (1) “Board of Regents’ balance,” the contributions from April 1, 1964, to June 30, 1975, plus accumulated interest, made by the Board of Regents and deposited on behalf of an employee in any pension fund that is established by contract with an insurance company;
- (2) “Excess balance,” the contributions in addition to those accumulated in the individual balance and made from April 1, 1964, to June 30, 1975, with accumulated interest, by a Board of Regents employee included in the provisions of §§ 3–12–69.1 to 3–12–69.5, inclusive, and deposited in any pension fund that is established by contract with an insurance company;
- (3) “Individual balance,” the contributions from April 1, 1964, to June 30, 1975, with accumulated interest made on a matching basis by the Board of Regents’ employees included in the provisions of §§ 3–12–69.1 to 3–12–69.5, inclusive, and the Board of Regents and deposited on behalf of the employee in any pension fund that is established by contract with an insurance company.

Source: SL 1975, ch 38, § 1; SL 1979, ch 29, § 1.

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3–12–69.2. Existing regents' contracts preserved—Expansion of retirement plan—Transition

Nothing in §§ 3–12–69.1 to 3–12–69.5, inclusive, shall be construed to be a termination of any contract made on behalf of the State of South Dakota and its employees by the Board of Regents. The purpose of said sections is to expand the retirement plan of the Board of Regents for faculty and administrators and to allow for the transition of the plan in effect from April 1, 1964, to June 30, 1975, into the South Dakota Retirement System as provided for in this chapter.

Source: SL 1975, ch 38, § 2.

Library References

Colleges and Universities ⌘8(3).
Westlaw Key Number Search:
81k8(3).

C.J.S. Colleges and Universities §§ 22
to 23.

3–12–69.3. Contract for purchase of service for Board of Regents

The Board of Regents shall enter into a contractual agreement with the Board of Trustees on the same basis as a new participating unit for purchase of a maximum of twenty years of service prior to April 1, 1964, pursuant to the provisions of § 3–12–69 and subject to the provisions of § 3–12–69.4.

Source: SL 1975, ch 38, § 3.

Library References

Colleges and Universities ⌘8(3).
Westlaw Key Number Search:
81k8(3).

C.J.S. Colleges and Universities §§ 22
to 23.

3–12–69.4. Contributory service credited to Board of Regents employees—Eligibility of nonparticipating employees—Qualification for prior credited service

Employees of the Board of Regents shall be credited with contributory service for each year such employee participated in the retirement plan in effect between April 1, 1964, and June 30, 1975. Employees of the Board of Regents who did not participate during all the years that they were eligible to participate in the Board of Regents retirement plan in effect from April 1, 1964, to June 30, 1975, are eligible for credited service

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only if purchase is made pursuant to § 3–12–83. Credited service must be obtained for all South Dakota service between April 1, 1964, and June 30, 1975, in order to qualify an employee for credited service prior to April 1, 1964, as granted by § 3–12–69.3.

Source: SL 1975, ch 38, § 4.

Library References				C.J.S. Colleges and Universities §§ 22
Colleges and Universities	⌘	8(3).		to 23.
Westlaw	Key	Number	Search:	
	81k8(3).			

3–12–69.5. Normal retirement allowance reduced by actuarial equivalent—Deposit of individual balance—Member contributions

All benefits payable pursuant to § 3–12–91 shall be reduced by the actuarial equivalent that could be purchased by a sum of money equal to twice the value of the Board of Regents' balance payable at the member's retirement. The Board of Regents is hereby authorized, if the Board of Regents receives member approval, to deposit with the system the individual balance accumulated in the regents retirement system during the period April 1, 1964, to June 30, 1975. Such deposit shall not include the excess balance as defined in § 3–12–69.1. In the administration of this chapter, the individual balance shall be considered as member contributions.

Source: SL 1975, ch 38, § 5; SL 1976, ch 40, § 2; SL 1979, ch 29, § 2.

Library References				C.J.S. Colleges and Universities §§ 22
Colleges and Universities	⌘	8(3).		to 23.
Westlaw	Key	Number	Search:	
	81k8(3).			

3–12–70. Effective date of participation by employees of unit joining consolidated system

The date when the participation of the employees of a participating unit may commence shall be July first or January first of a given year but not more than twelve months following the date the board approves participation.

Source: SL 1967, ch 303, § 10; SDCL § 3–12–37; SL 1968, ch 216, § 1; SL 1974, ch 35, § 28.

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Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-71. Rate of contributions—Deduction from pay—Employer to make members' contributions

The member shall make a contribution and the employer shall make an equal contribution, except as otherwise specified, at the following rates:

- (1) Class A members five percent of compensation through June 30, 2002, and six percent of compensation after June 30, 2002;
- (2) Justices, judges, and law-trained magistrates nine percent of compensation;
- (3) All other Class B members eight percent of compensation.

The employer shall cause to be deducted on each payroll of a member for each payroll period the contribution payable by the member as provided in this section.

Contributions required of members by this section shall be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1984. Such contributions shall be classified as member contributions for all purposes under this chapter. A member may not receive the amount of such contributions directly rather than as contributions under this section.

Source: SL 1967, ch 303, § 5; SDCL §§ 3-12-22, 3-12-23; SL 1968, ch 216, § 1; SL 1974, ch 35, § 29; SL 1977, ch 31, § 5; SL 1982, ch 38; SL 1984, ch 23, § 2; SL 1989, ch 38, § 8; SL 2000, ch 23, § 1.

Administrative Code References

State retirement system, refund of active contributions made during period of disability, see S.D. Admin. R. 62:01:02:06.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

SOUTH DAKOTA RETIREMENT SYSTEM

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Notes of Decisions

Retirement bonus 1

1. Retirement bonus

Retirement bonus, either in lump sum or installments, is not subject to South

Dakota retirement system contributions under this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

3-12-72. Monthly transmittal of contributions—Deposit in fund

All employee and employer contributions to the system and the necessary supporting data shall be transmitted by the employer at least monthly to the administration office of the system. All contributions so transmitted shall be deposited with the state treasurer in the fund duly established to administer this chapter. If any participating unit fails to deliver contributions with respect to compensation paid in any fiscal year and the necessary supporting data within fifteen days after the end of that fiscal year, the participating unit shall pay to the system a penalty equal to five percent of the delinquent contributions. The delinquent contributions and the penalty shall bear interest at the category C rate specified in § 54-3-16 from the date due until the date paid. In calculating accumulated contributions pursuant to subdivision 3-12-47(2), all member contributions with respect to compensation paid in any fiscal year shall be included in the calculation of interest credited for that fiscal year.

Source: SL 1959, ch 84, § 28; SDC Supp 1960, § 15.3932 (3); SL 1961, ch 255, § 29; SL 1965, ch 220, § 21; SL 1967, ch 50, § 4; SL 1967, ch 303, § 5; SDCL §§ 3-12-22 to 3-12-24, 3-12-28, 9-15-49, 13-45-32; SL 1968, ch 216, § 1; SL 1970, ch 25, § 4; SL 1974, ch 35, § 30; SL 1978, ch 32, § 1; SL 1986, ch 38.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-72.1. Use of fund restricted

No part of the fund created by this chapter may be used for any purpose other than for the exclusive benefit of members and their beneficiaries and payment of reasonable administrative expenses of the system. No participating unit may receive any amounts from the fund except such amounts which may

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remain after the satisfaction of all liabilities of the system to its members.

Source: SL 1984, ch 23, § 3.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-72.2. Rights of members on termination of system or discontinuance of contributions

If the system is terminated, or if contributions to the system are discontinued, the rights of all members to benefits which have accrued as of the date of termination or discontinuation of contributions shall vest. A member's recourse against the fund shall be limited by the extent to which his benefits are funded.

Source: SL 1984, ch 23, § 4.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-72.3. Diversion of funds prohibited—Legislative policy

In order to ensure employee confidence in the preservation and management of the South Dakota Retirement System, it is legislative policy that there should be no legislative enactment nor administrative action which would have the effect, directly or indirectly, of diverting any funds of the system to any purpose other than the administration and support of the benefits of members of the system.

Source: SL 1990, ch 34.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-72.4. Privatization of governmental function

If a participating unit determines that a governmental function is to be privatized, the participating unit shall pass a

resolution to that effect determining the date that its employees will cease to be public employees eligible for membership in the system. The participating unit shall notify the system and the employees affected of its resolution and, after the effective date, cease to make contributions to the South Dakota Retirement System as required in §§ 3-12-71 and 3-12-72. Any member affected by privatization is entitled to the benefits accrued as of the effective date under the provisions of chapter 3-12. For the purposes of determining eligibility for vesting pursuant to subdivision § 3-12-47(73) and early retirement pursuant to § 3-12-106, years of service with the successor employer shall be considered.

Source: SL 1997, ch 30, § 1.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-73. Service records and employee information furnished by employers

The officers responsible for the personnel records of employees of each participating unit shall file with the Board of Trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered by each eligible employee of the system; and shall furnish such other information as the board shall from time to time require in the operation of the system.

Source: SL 1967, ch 303, § 10; SDCL § 3-12-39; SL 1968, ch 216, § 1; SL 1974, ch 35, § 31.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-74. Deduction of delinquent contributions from payments due from state—Interest charged

In the event any participating unit becomes delinquent thirty or more days by failure or refusal to pay any amounts due the

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system, the state treasurer is hereby authorized and directed, upon certification by the administrator of such delinquency, to withhold and deduct the amount of such delinquency plus interest at the rate of two times the effective rate of interest from the next succeeding payment or payments of any money in the hands of the state treasurer due and payable to said participating unit.

Source: SL 1959, ch 84, § 30; SDC Supp 1960, § 15.3934 (2); SL 1967, ch 50, § 5; SDCL § 13-45-38; SL 1970, ch 25, § 13; SDCL Supp, § 3-12-23.1; SL 1974, ch 35, § 32.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-75. Retirement allowance to terminated member with vested right—Calculation

A terminated member who has a vested right in the system may leave the member's accumulated contributions on deposit with the system and receive a retirement allowance commencing at the member's retirement. In calculating such allowance, the member's final average compensation shall be increased by the improvement factor for the period between the member's last termination and the date on which the member's retirement allowance commences.

Source: SL 1974, ch 35, § 33; SL 1982, ch 32, § 4; SL 1986, ch 37, § 4; SL 1998, ch 17, § 3; SL 2004, ch 40, § 8.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

members and legislative appropriations, and any member after thirty years teaching and upon attaining age sixty was entitled to receive annuity and pension, members who had contributed for thirty years but who had not reached age sixty had no vested rights in pension fund but had mere inchoate rights subject to cancellation at will of legislature. Laws 1939, c. 51, as amended, Laws 1945, c. 64, Laws 1951, cc. 74, 75. Tait v. Freeman, 1953, 74 S.D. 620, 57 N.W.2d 520. Constitutional Law § 102(2)

Notes of Decisions

Vested rights 1

1. Vested rights

Where Teachers' Retirement System fund consisted of contributions from

3–12–76. Withdrawal of accumulated contributions on termination of public service—Exception

A member terminating public service is entitled to the sum of the member's accumulated contributions upon application to the system in lieu of retaining credited service and benefits provided in this chapter.

The right to withdraw accumulated contributions ceases within ninety days of a return to employment with a participating unit.

Source: SL 1967, ch 303, § 8; SDCL § 3–12–30; SL 1968, ch 216, § 1; SL 1974, ch 35, § 34; SL 1977, ch 28, § 6; SL 1995, ch 24, § 13; SL 1998, ch 15, § 6.

Administrative Code References

State retirement system, lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Westlaw	Key	Number	Search:
	283k101.5(1).		
C.J.S.	Officers and Public Employees	§§ 311 to 320.	

Library References

Officers and Public Employees
⇒101.5(1).

3–12–76.1. Withdrawal of accumulated contributions by member who does not terminate public service

Notwithstanding the provisions of § 3–12–76, a member who ceases to be a permanent full-time employee but who does not terminate public service may withdraw his accumulated contributions from the system, if, at the time of withdrawal, the member has made no contributions to the system for a period of at least one year. A member who withdraws his accumulated contributions under this section forfeits all credited service and benefits under this chapter.

Source: SL 1982, ch 32, § 3.

Administrative Code References

State retirement system, lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Westlaw	Key	Number	Search:
	283k101.5(1).		
C.J.S.	Officers and Public Employees	§§ 311 to 320.	

Library References

Officers and Public Employees
⇒101.5(1).

§ 3-12-76.2

PUBLIC OFFICERS AND EMPLOYEES

3-12-76.2. Application of forfeitures

Forfeitures arising because of termination of employment before the member becomes eligible for benefits or for any other reason shall be applied to reduce the costs of the system and not to increase the benefits otherwise payable to members.

Source: SL 1984, ch 23, § 5.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-76.3. Distribution by direct rollover

A member who elects to withdraw accumulated contributions as provided in § 3-12-76 or 3-12-76.1 may receive the distribution directly. Eligible rollover distributions may be transferred by the system in a direct rollover to no more than one eligible retirement plan identified by the member if a member so elects. The system is not required to make an independent determination as to whether the plan identified by the member qualifies as an eligible retirement plan. By electing a direct rollover and identifying the eligible retirement plan to which an eligible rollover distribution is to be made, the member represents to the system that the identified plan qualifies as an eligible retirement plan. If the member does not elect a direct rollover, the distribution shall be issued in the name of, and directly to, the member.

Source: SL 1993, ch 42, § 5; SL 1995, ch 24, § 17; SL 1998, ch 15, § 7.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-77. Contributions left in system on termination of employment without vested right—Maximum period—Forfeiture

A member of the system who is not vested may leave the member's accumulated contributions in the system upon termi-

nation of employment for a period not to exceed ten years from the date of termination. However, no additional contributions may be made to the system by the member or a participating unit following the date of termination and no benefits in the retirement system may accrue to a member of the system following the date of termination except as provided in § 3–12–72.4. If the member withdraws the member's accumulated contributions, membership in the system terminates. At the end of the ten-year period, no further interest may be credited with respect to contributions. If the member fails to withdraw the member's accumulated contributions within eleven years following the member's termination, the member shall forfeit all rights to the member's accumulated contributions and to any credited service in connection therewith, if the system has made reasonable efforts to notify the member of the member's withdrawal rights and the effect of this section.

Source: SL 1972, ch 22; SDCL Supp, § 3–12–32; SL 1974, ch 35, § 35; SL 1984, ch 24, § 1; SL 1998, ch 15, § 8; SL 1998, ch 18, § 2.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
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3–12–77.1. Uncollected payments from system—Reversion

If any payment from the system remains uncollected for a period of three years following the date upon which a warrant for the payment was issued, the payment shall revert to the system and all rights to such payment shall terminate, if the system has made reasonable efforts to notify the person entitled to the payment of his right to the payment and the effect of this section.

Source: SL 1984, ch 24, § 2.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

§ 3-12-77.2

PUBLIC OFFICERS AND EMPLOYEES

3-12-77.2. Forfeiture of contributions to predecessor system

With respect to contributions made prior to July 1, 1974, to any predecessor system consolidated pursuant to § 3-12-46 and with respect to any payment made by any such predecessor system which became due prior to July 1, 1974, the time periods specified in §§ 3-12-77 and 3-12-77.1 commenced on July 1, 1974.

Source: SL 1984, ch 24, § 3.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-77.3. Reinstatement of terminated rights

Any rights which have terminated pursuant to the provisions of § 3-12-77 or 3-12-77.1 may be reinstated upon presentation to the system administrator of a request for reinstatement of those rights and competent evidence of the rights.

Source: SL 1984, ch 24, § 4.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-77.4. Early withdrawal precludes additional refund

No member or former member of the system who has withdrawn contributions from the system prior to July 1, 1998, may receive any additional refund under the provisions of §§ 3-12-47 to 3-12-152.

Source: SL 1998, ch 15, § 31.

Library References				Notes of Decisions
Officers and Public Employees				In general 1
⇒101.5(1).				1. In general
Westlaw	Key	Number	Search:	Even assuming Board of Trustees of state Retirement System breached its fiduciary duty to former members who requested and received a refund of contributions they made to System by fail-
283k101.5(1).				
C.J.S. Officers and Public Employees				
§§ 311 to 320.				

ing to disclose to such members that it was considering seeking legislative approval to allow withdrawal of employer contributions as well, Board lacked authority to consider such breach of fiduciary duty as a basis for refunding employer contributions after legislature approved the proposed amendment,

where amendment specifically provided that no member or former member who withdrew contributions before its effective date could receive an additional refund. SDCL 3-12-77.4. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 SD 77. States ⌘ 64.1(4)

3-12-78. Prior service credit on return to employment without vested right

If a nonvested member who has terminated employment and has left the member's contributions in the system returns to employment with a participating unit, the system shall credit the member's prior service time toward the total length of service necessary for the member to obtain the credited service necessary for benefits provided by this chapter.

Source: SL 1972, ch 22; SDCL Supp, § 3-12-32; SL 1974, ch 35, § 36; SL 1998, ch 18, § 3.

Library References

Officers and Public Employees
⌘101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-79. Repealed by SL 1998, ch 18, § 4

Historical and Statutory Notes

The repealed section related to withdrawal of contributions by nonvested

member who does not return to employment, termination of membership.

3-12-80. Redeposit of contributions by member returning to service—Time of redeposit

If a person whose accumulated contributions have been refunded since July 1, 1974, reenters the system, the person may elect to redeposit the accumulated contributions, with compound interest at the current effective rate between the date of withdrawal and the date of redeposit. The redeposit shall be made within two years after reentry into the system and the credited service forfeited when contributions were refunded shall then be reinstated.

Any withdrawals of additional contributions made pursuant to § 3-12-104 shall be considered accumulated contributions

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for purposes of redeposit to reinstate the credited service forfeited when contributions were refunded.

Source: SL 1974, ch 35, § 38; SL 1977, ch 28, § 7; SL 1978, ch 32, § 2; SL 1996, ch 31.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-81. Repealed by SL 2004, ch 37, § 4

Commission Note

This section was amended by SL 2004, ch 38, § 8 and repealed by SL 2004, ch 37, § 4. The Code Commission deems the legislative intent was to repeal this section.

a new employee if withdrawn contributions were not redeposited, was derived from SL 1967, ch 303, § 9; SDCL, § 3-12-34; SL 1968, ch 216, § 1; SL 1970, ch 25, § 10; SL 1974, ch 35, § 38.

Historical and Statutory Notes

The repealed section, which related to a reemployed member being treated as

3-12-81.1. Reemployment of retired member—Termination of relationship with initial participating unit—Hiring procedures

If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3-12-47(70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its system representative shall so certify.

Source: SL 2004, ch 38, § 6.

3–12–82. Retirement allowance for reemployed member—Refund—Additional allowance—Reduction—Annual increase—Application

If less than three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of § 3–12–47(24) is acquired after a retired member's reentry into covered employment, the member upon subsequent retirement shall receive a refund of the member's contributions and seventy-five percent of the employer's contributions, plus interest on both at the effective rate, made during the period after reentry.

If three years or more of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of § 3–12–47(24) are acquired after a retired member's reentry into covered employment, the member upon subsequent retirement shall receive an additional allowance based upon the member's credited service and final compensation earned during such reentry. Only the member's credited service from the subsequent employment shall be taken into account in calculating a reduction pursuant to § 3–12–106, if any, in the member's additional allowance. In addition, the annual increase applied to the original allowance pursuant to § 3–12–88 shall be eliminated for such period of reemployment, unless the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently has reentered covered employment as a Class A member.

The provisions of this section apply to any member who retired without any reduction in benefits pursuant to § 3–12–106 and who reenters covered employment on or after July 1, 2004.

Source: SL 1974, ch 35, § 39; SL 1978, ch 32, § 3; SL 1982, ch 32, § 5; SL 1997, ch 28, § 1; SL 1998, ch 15, § 10; SL 2004, ch 38, § 1; SL 2005, ch 24, § 3.

Historical and Statutory Notes	are suspended pursuant to § 3–12–111
SL 1997, c. 28, §§ 3 and 4, provide:	on the effective date of this Act. The
"Section 3. The provisions of this	provisions of this Act apply to any mem-
Act apply to any member whose benefits	ber whose benefits previously were sus-

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pending pursuant to § 3-12-111, if the member elects to have the provisions apply.

"Section 4. Any increase in a member's retirement benefit as a result of the provisions of this Act shall be prospective only from the effective date of this Act."

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-83. Purchase of prior service credit—Calculation of amount due

A current contributing member of the system may receive credited service by election to make, or have made on the member's behalf, contributions, based on the higher of the member's current compensation, or the member's final compensation calculated as if the member retired on the date of election, at an actuarially-determined percentage times the member rate, for each year of service for which the member wishes to receive credit, if:

- (1) The current contributing member of the system could have established credit for any South Dakota public service by making contributions under this chapter or any prior law; or
- (2) The current contributing member was not permitted to establish credit for any South Dakota public service.

The amount of the credited service and the rate of contribution shall be at class A rates unless the service for which credit is sought was rendered as a class B member in which case class B rates shall apply. If a participating unit has failed to pay employer or member contributions to the system on behalf of a member as required under this chapter or under any predecessor system consolidated pursuant to § 3-12-46, the amount due the system shall be calculated in accordance with this section.

The member rate in effect as of July 1, 2001, shall be used in calculation of the purchase cost of any service performed prior to July 1, 2002, if a contract to purchase such service is in place prior to July 1, 2004. The member rate in effect on and after July 1, 2002, shall be the basis for calculation of the purchase cost of any service if the contract to purchase such service is not in place until on or after July 1, 2004.

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Source: SL 1974, ch 35, § 40; SL 1977, ch 28, § 8; SL 1980, ch 31, § 4; SL 1984, ch 24, § 5; SL 1989, ch 38, § 16; SL 2002, ch 23, § 2; SL 2004, ch 39, § 1.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

ion No. 78-15 (Apr. 17, 1978), 1978 WL 33885.

2. Limitation of action

Former school superintendent's action against school district seeking contribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3-12-83, 15-2-13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. Limitation Of Actions § 95(14)

Notes of Decisions

Limitation of action 2

Rate of contribution 1

1. Rate of contribution

Obligation incurred by school district under old pre-1974 rate, but not then paid, is now affixed at rate established under this chapter. Op. Atty. Gen. Opin-

3-12-83.1. Purchase of prior service credit on tax-deferred basis

Other provisions of this chapter notwithstanding, any participating unit may become a tax-qualifying purchase unit at any time on or after July 1, 1996, if the unit is able to transmit credited service purchase data to the system by electronic media compatible with the system. The decision to become a tax-qualifying purchase unit shall be made by the elected official, the appointed official, or the governing body in charge of the unit. The unit shall become a tax-qualifying purchase unit as soon as notice of the decision has been delivered in writing to the system. If a unit becomes a tax-qualifying purchase unit, any unit employee member who purchases credited service under this chapter shall do so as provided in § 3-12-83.2. A tax-qualifying purchase unit at a later date may choose to rescind such status and may do so by delivering written notice of the decision to the system. However, if such a rescission, any employer contribution agreement entered into pursuant to § 3-12-83.2, but not yet completed, shall continue until completion or until death or termination of the member.

Source: SL 1996, ch 30, § 2.

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Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-83.2. Purchase of prior service credit by member of tax-qualifying purchase unit

The provisions of § 3-12-83 notwithstanding, a member who is employed by a tax-qualifying purchase unit may purchase credited service pursuant to the procedures outlined in §§ 3-12-83 and 3-12-84 on a tax-deferred basis pursuant to § 414(h)(2) of the Internal Revenue Code, as in effect on January 1, 1996. The purchase shall be in the nature of a credited service purchase under the provisions of § 3-12-83, except that:

- (1) The purchase shall be pursuant to an irrevocable employer contribution agreement entered into between the member and the tax-qualifying purchase unit and shall be executed prior to the period of contribution;
- (2) The irrevocable employer contribution agreement may not exceed a period of ten years;
- (3) The contributions may represent reductions in the member's compensation but shall be deemed employer contributions pursuant to § 3-12-71;
- (4) The contributions may be for any period of uncredited service; and
- (5) No other purchase of uncredited service pursuant to § 3-12-83 or other provision of this chapter, may take place while an irrevocable employer contribution agreement is in effect pursuant to this section.

In no event may a member receive the contributions directly. If a member dies or terminates employment prior to completion of the member's irrevocable employer contribution agreement, the member's credited service shall be adjusted by the system on the basis of that portion of the agreement that was completed prior to the death or termination.

A member who is participating in an installment credited service purchase pursuant to § 3-12-87 on the date that the

member's employer unit becomes a tax-qualifying purchase unit shall either terminate the purchase or complete the purchase as a tax-deferral purchase pursuant to this section. If the member elects to continue the purchase, the original purchase agreement shall be deemed an irrevocable employer contribution agreement.

Source: SL 1996, ch 30, § 3.

Administrative Code References

State retirement system, leave of absence without pay during service purchase agreement, see S.D. Admin. R. 62:01:02:07.

Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

Library References

Officers and Public Employees
⇒101.5(1).

3-12-84. Purchase of prior service credit for public service not covered by retirement plan

If a current contributing member of this system has other public service for which the member is not entitled to retirement benefits from another public retirement system, the member may elect to deposit or have deposited on the member's behalf an amount equal to an actuarially-determined percentage times the Class A rate of contribution multiplied by the higher of the member's annual compensation at the time of making the election, or the member's final compensation calculated as if the member retired on the date of the member's election, for each year of other public service for which the member wishes to receive credit as a Class A member.

The member rate in effect as of July 1, 2001, shall be used in calculation of the purchase cost of any service performed prior to July 1, 2002, if a contract to purchase such service was in place prior to July 1, 2004. The member rate in effect on and after July 1, 2002, shall be the basis for calculation of the purchase cost of any service if the contract to purchase such service is not in place until on or after July 1, 2004.

Source: SL 1974, ch 35, § 41; SL 1980, ch 31, § 5; SL 1984, ch 24, § 6; SL 1989, ch 38, § 17; SL 2002, ch 23, § 3; SL 2004, ch 39, § 2.

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PUBLIC OFFICERS AND EMPLOYEES

Library References

Officers and Public Employees
⌘101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
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tribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3-12-83, 15-2-13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. Limitation Of Actions ⌘95(14)

Notes of Decisions

Limitation of actions 1

1. Limitation of actions

Former school superintendent's action against school district seeking con-

3-12-84.1. Acquisition of credited service through transfer of funds—Requirements

A contributing member may acquire credited service by utilizing a trustee to trustee transfer of funds, excluding any after tax employee contributions, from a member's individual retirement plan that meets the requirements of sections 403(b) or 457 of the Internal Revenue Code as in effect on January 1, 2002, to pay the cost of purchase pursuant to § 3-12-83 or 3-12-84 or the amount of a redeposit pursuant to § 3-12-80.

Source: SL 2002, ch 22, § 4.

Library References

Officers and Public Employees
⌘101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-84.2. Purchase of permissive service credit allowed—Exception

Notwithstanding the restrictions contained in §§ 3-12-83 and 3-12-84, current contributing members may purchase permissive service credit as defined in and pursuant to the provisions of § 415(n) of the Internal Revenue Code as amended and in effect as of January 1, 2003, except that service for a for-profit entity does not qualify for purchase.

Source: SL 2003, ch 94, § 2.

Administrative Code References

State retirement system, purchase of permissive service credit, see S.D. Admin. R. 62:01:02:05.

Library References

Officers and Public Employees
⌘101.5(1).

Westlaw	Key	Number	Search:	C.J.S. Officers and Public Employees
	283k101.5(1).			§§ 311 to 320.

3-12-84.3. Acquisition of credited service for members mobilized into certain federal military service

If a contributing member was mobilized into federal military service pursuant to the provisions of United States Code Title 10 after February 1, 2002, but prior to September 30, 2004, the member, after returning to active membership in the system, may acquire credited service at the rates in effect prior to July 1, 2004, for a period of two years after the member's release from such federal military service, the cost provisions of §§ 3-12-83, 3-12-84, and 3-12-130 notwithstanding. All other provisions in regard to credited service acquisition apply.

Source: SL 2005, ch 25, § 1.

3-12-85. Service credit for leave of absence—Contributions to cover period of absence

A member taking a leave of absence authorized by his employer may receive credited service during such leave if employee and employer contributions are made to the system during such leave by or on behalf of the employee. Such contributions shall be at the rates in effect during such leave and shall be based on the member's rate of compensation immediately prior to such leave. Such contributions shall be transmitted to the system at least monthly. For purposes of calculation of benefits, the member shall be considered to have received compensation during the period of such leave at the rate used to calculate the contributions made during such leave. If contributions are not made during such leave, the member may receive credited service for such leave by making, or having made on his behalf, contributions as provided in § 3-12-83.

Source: SL 1967, ch 303, § 9; SDCL § 3-12-31; SL 1968, ch 216, § 1; SL 1970, ch 25, § 9; SL 1973, ch 27; SL 1974, ch 35, § 42; SL 1980, ch 31, § 7.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
283k101.5(1).				
Westlaw	Key	Number	Search:	
	283k101.5(1).			

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3-12-86. Service credit for military leave of absence—Return to employment after service

A member shall receive credited service for leave of absence due to military service, authorized in advance by the employer, without contribution by the employee or employer if the member returns to the employ of a participating unit within one year from the member's date of discharge from the member's initial period of active military service and if the member remains in the employ of a participating unit for at least one year. The member may not receive credit for any voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction or call to active duty. No credited service granted under this section may be considered to represent either member contributions or employer contributions for purposes of contribution withdrawals pursuant to this chapter.

Source: SL 1970, ch 25, § 9; SDCL Supp, § 3-12-31; SL 1973, ch 27; SL 1974, ch 35, § 42; SL 1995, ch 24, § 12.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

1. Returning veterans

Veteran entitled to be granted extended service credit for entire period in Army if extensions of his active duty tour were for convenience of federal government. Op.Atty.Gen. Opinion No. 80-66, 1980 WL 119241.

Notes of Decisions

Returning veterans 1

3-12-87. Valuation of purchased prior service credit—Installment payments—Death of member—Adjustment when installments not paid

Payment of a deposit with the system for credited service pursuant to §§ 3-12-83 to 3-12-86, inclusive, shall be determined and due at the time the notice of intention to make such payment is received by the system. The amount due may be paid by periodic, level installments over a period of up to ten years, the value of which, when discounted for interest at the current effective rate, is equal to the amount due at the date of

the notice. If a member dies before completion of the installment payments, the surviving spouse may complete the payments due the system, but, unless the payments are being made by a participating unit, the amount must be paid in full within ninety days of the member's death or retirement. In the event the periodic payments are not completed or paid when due, the administrator may make an appropriate adjustment to the credited service, benefits payable under this chapter, or schedule of payments to allow for the default. Any member participating in installment payments pursuant to this section prior to July 1, 1989, shall have the balance due on July 1, 1989, recalculated pursuant to §§ 3-12-83 and 3-12-84 and shall have the installment payments due on or after July 1, 1989, recalculated accordingly. The provisions of this section apply only to installment payment purchases of credited service that are not tax-deferred, but do not apply to tax-deferred purchases pursuant to § 3-12-83.2

Source: SL 1974, ch 35, § 43; SL 1977, ch 28, § 9; SL 1980, ch 31, § 6; SL 1989, ch 38, § 18; SL 1996, ch 30, § 4.

Library References

Officers and Public Employees
 ⌘ 101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).
 C.J.S. Officers and Public Employees
 §§ 311 to 320.

tribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3-12-83, 15-2-13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. Limitation Of Actions ⌘ 95(14)

Notes of Decisions

Limitation of action 1

1. Limitation of action

Former school superintendent's action against school district seeking con-

3-12-88. Benefits increased by improvement factor—Increase elimination

All benefits except those depending on the member's contribution balance shall be annually increased by the improvement factor. However, the annual increase shall be eliminated for any period of time that a retired member reenters covered employment in the system, unless the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently has reentered covered employment as a Class

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A member, or unless the member retired without a benefit suspension pursuant to § 3-12-111 and then reentered active status prior to July 1, 2004. Such elimination shall cease when the member again retires and draws either a refund or an additional retirement allowance.

Source: SL 1974, ch 35, § 44; SL 2004, ch 38, § 2; SL 2005, ch 26, § 1.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-89. Uniform application of service credit rules

Any period of credited service granted under the rules and regulations adopted by the Board of Trustees must be applied uniformly and consistently to all members.

Source: SL 1974, ch 35, § 45.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-89.1. Rules regulating maximum annual benefit required

Pursuant to chapter 1-26, the board shall adopt rules regulating the maximum annual benefit which may be paid to a member. The rules shall conform to the provisions of § 415 of the Internal Revenue Code as in effect on January 1, 2002.

Source: SL 1984, ch 23, § 6; SL 1996, ch 29, § 2; SL 1997, ch 32, § 2; SL 2002, ch 22, § 3.

Administrative Code References	Westlaw Key	Number	Search:
State retirement system, retirement, benefit limits, see S.D. Admin. R. 62:01:08.		283k101.5(1).	
	C.J.S. Officers and Public Employees		§§ 311 to 320.

Library References			
Officers and Public Employees			
⇒101.5(1).			

SOUTH DAKOTA RETIREMENT SYSTEM §§ 3-12-90.1 to 3-12-90.5
Repealed

3-12-90. Commencement of benefits on early or normal retirement—Termination of benefits—Maximum retroactive benefits on late application

Benefits paid upon early or normal retirement shall commence on the earlier of the member's required beginning date or on the first day of the month following the later of, the date on which the member's contributory service terminated, thirty days after the written application for retirement benefits is received in the office of the administrator, or the date specified in the member's application for retirement. In any event the benefit shall be paid from the first day of the month. The last payment shall be made from the first day of the month in which the member's death occurs.

An individual who fails to make a timely application for retirement benefits may receive up to a maximum of three months of benefits retroactive to the date on which the member's contributory service terminated.

Source: SL 1967, ch 303, § 7; SDCL § 3-12-27; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-25; SL 1970, ch 25, § 5; SL 1974, ch 35, § 46; SL 1978, ch 32, § 4; SL 1993, ch 42, § 4.

Library References

Officers and Public Employees
 ⇒101.5(1).
Westlaw Key Number Search:
 283k101.5(1).
C.J.S. Officers and Public Employees
 §§ 311 to 320.

Notes of Decisions

Vested rights 1

1. Vested rights

Benefits vest on the later of the first of the month after retirement or the date requested by applicant, notwithstanding application time. Op.Atty. Gen. Opinion No. 77-44, 1977 WL 35982 (prior to 1978 amendment).

Where Teachers' Retirement System fund consisted of contributions from members and legislative appropriations, and any member after thirty years teaching and upon attaining age sixty was entitled to receive annuity and pension, members who had contributed for thirty years but who had not reached age sixty had no vested rights in pension fund but had mere inchoate rights subject to cancellation at will of legislature. Laws 1939, c. 51, as amended, Laws 1945, c. 64, Laws 1951, cc. 74, 75. Tait v. Freeman, 1953, 74 S.D. 620, 57 N.W.2d 520. Constitutional Law ⇒ 102(2)

3-12-90.1 to 3-12-90.5. Repealed by SL 1989, ch 38, §§ 10 to 14

Historical and Statutory Notes

Section 3-12-90.1 related to additional retirement benefits for member and

beneficiaries retired prior to July 1, 1974.

**§§ 3-12-90.1 to 3-12-90.5 PUBLIC OFFICERS AND EMPLOYEES
Repealed**

Section 3-12-90.2 related to additional retirement benefits, amount of recalculated monthly allowance, "recalculated increase" defined.

Section 3-12-90.3 related to additional retirement benefits, members or beneficiaries not entitled to benefits.

Section 3-12-90.4 related to additional retirement benefits, payments from fund and appropriations.

Section 3-12-90.5 related to additional retirement benefits, appropriation.

3-12-90.6 to 3-12-90.8. Repealed by SL 1998, ch 15, §§ 11 to 13

Historical and Statutory Notes

Section 3-12-90.6 related to recomputation of allowance of members who retired prior to 1991.

Section 3-12-90.7 related to amount of recomputed monthly allowance.

Section 3-12-90.8 related to certain members prohibited from receiving additional benefits.

3-12-90.9. Repealed by SL 1989, ch 38, § 15

Historical and Statutory Notes

The repealed section related to additional increases for recomputed benefits paid from fund.

3-12-90.10. Repealed by SL 1998, ch 15, § 14

Historical and Statutory Notes

The repealed section related to reduction of benefits, limitation.

3-12-91. Amount of normal retirement allowance for class A members

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3-12-90, for Class A credited service, equal to the larger of 1.625% of final compensation for each year of Class A credited service before July 1, 2002, plus 1.55% of final compensation for each year of Class A credited service after July 1, 2002, or 2.325% of final compensation for each year of Class A credited service before July 1, 2002, plus 2.25% of final compensation for each year of Class A credited service after July 1, 2002, less other public benefits. For purposes of this section, federal military retirement or federal national guard retirement benefits are not other public benefits. For the purposes of this section, any Class A member who did not participate in federal social security during the period of

credited service shall be presumed to be entitled to the maximum primary social security benefit permitted at the time of retirement. Class A credited service includes all credited service under this or any of the retirement systems consolidated pursuant to § 3-12-46.

Source: SL 1967, ch 303, § 7; SDCL § 3-12-27; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-25; SL 1970, ch 25, § 5; SL 1974, ch 35, § 47; SL 1975, ch 39, § 5; SL 1982, ch 39; SL 1986, ch 37, § 5; SL 1987, ch 37, §§ 7, 8; SL 1989, ch 38, § 4; SL 1990, ch 37; SL 1991, ch 32; SL 1993, ch 44, § 4; SL 1994, ch 34, § 3; SL 1997, ch 26, § 2; SL 1998, ch 15, § 15; SL 1999, ch 15, § 2; SL 2000, ch 25, § 1; SL 2002, ch 23, § 1.

Cross References

Benefits reduced in relation to Board of Regents' balance, see § 3-12-69.5.

Library References

Officers and Public Employees
 ⇒101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).
 C.J.S. Officers and Public Employees
 §§ 311 to 320.

Notes of Decisions

Early retirement benefits 1

1. Early retirement benefits

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of early retirement benefits under this section and § 3-12-106. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

3-12-91.1. Additional contribution by participating unit

Each participating unit shall make an additional contribution in the amount of six and two-tenths percent of any member's compensation in each calendar year that exceeds the maximum taxable amount for social security for the calendar year. The additional contributions shall be made only for Class A members and may not be treated as employer contributions.

Source: SL 2002, ch 23, § 5.

Library References

Officers and Public Employees
 ⇒101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).

C.J.S. Officers and Public Employees
 §§ 311 to 320.

3-12-92. Amount of normal retirement allowance for certain class B members

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3-12-90, for Class B credited service other than as a justice, judge, or magistrate judge, equal to

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PUBLIC OFFICERS AND EMPLOYEES

2.325% of final compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge before July 1, 2002, plus 2.0% of final compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge after July 1, 2002.

Source: SL 1974, ch 35, § 48; SL 1993, ch 44, § 5; SL 1994, ch 34, § 4; SL 1997, ch 26, § 3; SL 1998, ch 15, § 16; SL 1999, ch 15, § 3; SL 2000, ch 25, § 2.

Library References	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 311 to 320.
⇒101.5(1).	
Westlaw Key Number Search:	
283k101.5(1).	

3-12-92.1. Penitentiary correctional staff benefits

For purposes of determining the benefits of a penitentiary correctional staff, for credited service earned prior to July 1, 1978, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after July 1, 1978, the benefits shall be calculated pursuant to § 3-12-92.

Source: SL 1977, ch 31, § 4.

Library References	C.J.S. Prisons and Rights of Prisoners
Prisons ⇒8.	§§ 18 to 19.
Westlaw Key Number Search: 310k8.	

3-12-92.2. Calculation of benefits for sheriffs and deputies— Prior elective rights preserved

For the purposes of determining the benefits of county sheriffs and deputy county sheriffs, for credited service earned prior to January 1, 1980, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after January 1, 1980, the benefits shall be calculated pursuant to § 3-12-92. Nothing in this chapter shall be construed as an abridgement of the right of a sheriff to exercise his right to elect to participate pursuant to § 3-12-64.

Source: SL 1979, ch 26, §§ 2, 3.

Library References	Westlaw Key Number Search:
Sheriffs and Constables ⇒28.	353k28.
	C.J.S. Sheriffs and Constables § 469.

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Repealed

3-12-92.3. Calculation of benefits of parole agent

For purposes of determining the benefits of a parole agent, for credited service earned prior to July 1, 1991, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1991, the benefits shall be calculated pursuant to § 3-12-92.

Source: SL 1991, ch 29, § 3.

Library References

Pardon and Parole ⌘55.1.

Westlaw Key Number Search:
284k55.1.

3-12-92.4. Amount of retirement allowance for justice, judge or magistrate judge

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3-12-90, for the first fifteen years of Class B credited service as a justice, judge, or magistrate judge equal to 3.658% of final compensation for each year of Class B credited service as a justice, judge, or magistrate judge before July 1, 2002, plus 3.333% of final compensation for each year of Class B credited service as a justice, judge, or magistrate judge after July 1, 2002. A member shall also receive for Class B credited service as a justice, judge, or magistrate judge in excess of fifteen years, 2.325% of final compensation for each year of Class B credited service as a justice, judge, or magistrate judge before July 1, 2002, plus 2.0% of final compensation for each year of Class B credited service as a justice, judge, or magistrate judge after July 1, 2002.

Source: SL 1994, ch 34, § 5; SL 1997, ch 26, § 4; SL 1998, ch 15, § 17; SL 1999, ch 15, § 4; SL 2000, ch 25, § 3.

Library References

Judges ⌘22(11).

Westlaw Key Number Search:
227k22(11).

C.J.S. Judges § 85.

3-12-92.5. Repealed by SL 1999, ch 15, § 5

Historical and Statutory Notes

The repealed section related to retirement allowances prior to July 1, 1997.

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3-12-92.6. Adjustments in allowance for certain retirees based on time and circumstances of retirement

Each member who retired prior to July 1, 2000, and each beneficiary of a deceased member who retired prior to July 1, 2000, shall receive a retirement allowance based on the provisions of § 3-12-91, 3-12-92, or 3-12-92.4 as applicable based on the member's final compensation, credited service, and other public benefits at retirement and the benefit formulas in §§ 3-12-91, 3-12-92, and 3-12-92.4 when improved by the improvement factor from the date of retirement to July 1, 2000.

Increased benefits as provided by any amendment to this section are prospective in nature and are effective July 1, 2000.

Each member or beneficiary of a member who retired prior to July 1, 1974, who is receiving benefits pursuant to § 3-12-126 or each member or beneficiary of a member who elected to retire pursuant to § 3-12-127, shall have a benefit increased by an additional 2.0% as of July 1, 2000, in lieu of the increase provided in this section.

If a member retired prior to normal retirement age, the allowance shall be adjusted in accordance with the law in effect at the time of retirement. If a member elected an alternate method of payment under the law in effect at the time of retirement, the allowance shall be adjusted in accordance with the law in effect at the time of retirement. If the additional allowance is to be paid to a beneficiary of a deceased member, the additional allowance shall be adjusted in accordance with the law in effect at the time of the member's retirement.

No member or beneficiary whose retirement allowance terminated prior to July 1, 2000, may receive any benefits pursuant to this section.

Source: SL 1997, ch 26, § 7; SL 1998, ch 15, § 19; SL 1999, ch 15, § 6; SL 2000, ch 25, § 4.

Library References
Officers and Public Employees
§101.5(1).

Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-93. Amount of benefits for justice or judge mandatorily retired

Any justice of the Supreme Court or judge of the circuit court of this state who is automatically retired pursuant to the provisions of § 16-1-4.1 or 16-6-31, or who, having reached age seventy, retired prior to January 7, 1975, and who has not fully qualified for retirement benefits as provided by this chapter shall nevertheless receive retirement benefits in the proportion that his total time served bears to fifteen years, or if he has served in excess of fifteen years then receive full benefits.

Source: SL 1973, ch 133, § 3; SDCL Supp, § 16-8-9.3; SL 1974, ch 35, § 49.

Library References

C.J.S. Judges § 85.

Judges Ⓒ22(11).

Westlaw Key Number Search:
227k22(11).**3-12-94. Spouse's allowance on death of member after retirement age**

Upon the death of a retiree or any member who has reached normal retirement age, the surviving spouse is eligible to receive a normal retirement allowance, payable in monthly installments, equal to sixty percent of the retirement allowance that the member was receiving or was eligible to receive at the time of death.

Source: SL 1967, ch 303, § 9 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-29.2; SL 1970, ch 25, § 8; SL 1974, ch 35, § 50; SL 1999, ch 16, § 1.

Library References

C.J.S. Officers and Public Employees

Officers and Public Employees
Ⓒ101.5(1).

§§ 311 to 320.

Westlaw Key Number Search:
283k101.5(1).**3-12-94.1. Allowance to surviving spouse of law enforcement officer retired for disability**

Notwithstanding the repeal of § 3-13-25 by chapter 35 of the 1974 Session Laws, the surviving spouse of a disability retiree under the Law Enforcement Officers' Retirement System as consolidated into the South Dakota Retirement System pursu-


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ant to § 3-12-46 shall upon the death of the member be entitled to an annuity equal to one-half the member's annuity at the time of death. The retirement for disability upon which annuity was based shall have been approved prior to July 1, 1974.

Source: SL 1979, ch 26, § 3A.

Library References

Municipal Corporations  187(6).
Westlaw Key Number Search:
268k187(6).

C.J.S. Municipal Corporations § 529.

3-12-95. Family benefits payable on death of contributing member before retirement

On the death of a contributing member after July 1, 1974, and prior to the earlier of the member attaining normal retirement age or the member's retirement, who has one or more years of contributory service; or if there has been a break in the member's employment of more than one year, one-half year of contributory service having been performed after the end of the last such break; or if the member was receiving a disability allowance which commenced after July 1, 1974, the following benefits shall be paid:

- (1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to forty percent of the member's final average compensation, plus ten percent of such final average compensation for each child to a maximum of six such children;
- (2) The conservator or custodian of each child, on whose account there is no benefit payable under subdivision (1), shall receive on behalf of each child, to a maximum of five such children, an annual amount, payable in monthly installments, equal to twenty percent of the member's final average compensation;
- (3) If the sum of benefits payable under subdivisions (1) and (2) exceeds one hundred percent of the member's final average compensation, the benefits payable under both subdivisions (1) and (2) shall be proportionally reduced

so that the total of the benefits is equal to one hundred percent of the member's final average compensation;

- (4) If there are no benefits being paid under subdivision (1) and the member's accumulated contributions have not been withdrawn pursuant to § 3–12–97, the spouse who has reached age sixty-five shall receive a monthly payment equal to sixty percent of the amount which would have been payable to the deceased member at normal retirement age based on the member's credited and projected service and projected compensation. The benefit payable under this subdivision shall be increased by application of the improvement factor for time which elapses between the date the member would have reached normal retirement age and the date benefits commence to the spouse.

Family benefits begin to accrue on the first day of the month following the death of the member.

Source: SL 1967, ch 303, § 9 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3–12–29.2; SL 1970, ch 25, § 8; SL 1974, ch 35, § 51; SL 1976, ch 40, § 3; SL 1979, ch 30, § 1; SL 1980, ch 31, § 8; SL 1982, ch 34, § 2; SL 1984, ch 25; SL 1993, ch 213, § 78; SL 1999, ch 16, § 2; SL 2004, ch 40, § 1; SL 2005, ch 24, § 4; SL 2006, ch 18, § 2.

Commission Note

SL 2004, ch 40, § 12 provides:
“The provisions of this Act do not apply to benefits being paid pursuant to § 3–12–95, 3–12–99, or 3–12–105 prior to July 1, 2004.”

Administrative Code References

State retirement system, care of children, see S.D. Admin. R. 62:01:01:03.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–95.1. Benefits payment on minor's behalf to be made to custodian or conservator

Any payment of any benefit to a minor pursuant to the provisions of this chapter shall be made on the minor's behalf to a custodian or conservator appointed by law. No legal guardian may be deemed a custodian or conservator except by a separate appointment.

Source: SL 2006, ch 18, § 1.

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3–12–96. Deductions of member's primary social security from benefits

Seventy-five percent of a member's primary social security, without regard to any improvements, shall be deducted from the benefits provided in subdivisions 3–12–95(1) and (2).

Source: SL 1974, ch 35, § 51; SL 1977, ch 28, § 10; SL 1986, ch 37, § 6; SL 1994, ch 35, § 1.

Commission Note

The 1994 amendment to this section applies to allowances under subdivisions 3–12–95(1) and (2) payable on or after July 1, 1994.

Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Library References

Officers and Public Employees
⇒101.5(1).

3–12–97. Family benefits in lieu of other death benefits— Election by designated beneficiary to withdraw accumulated contributions

Family benefits payable under § 3–12–95 are in lieu of the death benefits payable under any other provision of this chapter except that a designated beneficiary may elect, subject to a deduction for any benefits previously paid, prior to the receipt of the first payment under subdivision 3–12–95 (4), to withdraw the member's accumulated contributions providing there are no children on account of whom benefits are payable under subdivisions 3–12–95(1) and (2).

Source: SL 1974, ch 35, § 51; SL 1975, ch 39, § 6.

Library References

Officers and Public Employees
⇒101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

Westlaw Key Number Search:
283k101.5(1).

3–12–98. Eligibility for disability allowance—Filing deadline

A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of § 3–12–47(24) since the member's most recent entry into active status and prior to becoming disabled or was disabled by

accidental means while performing usual duties for an employer, is eligible for a disability allowance if the disability is expected to be of long, continued, and indefinite duration of at least one year. In order to be eligible for a disability allowance, a member shall be disabled on the date the contributory service ends. Any member who fails to file with the administrator an application for disability benefits within three years of the date on which the member's contributory service ends, forfeits all rights to disability benefits. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status.

Source: SL 1974, ch 35, § 52; SL 1977, ch 28, § 11; SL 1979, ch 30, § 2; SL 1980, ch 31, § 3; SL 1992, ch 3; SL 2004, ch 37, § 3; SL 2005, ch 24, § 5.

Library References

Officers and Public Employees
 ⌚ 101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).
 C.J.S. Officers and Public Employees
 §§ 311 to 320.

Notes of Decisions

Similarly situated members 2

Sufficiency of evidence 3

Test of disability 1

1. Test of disability

Statute defining disability for purposes of state retirement system should be read to require member seeking disability benefits to first satisfy the test of inability to perform usual duties and then satisfy the test of performance of duties of the position of comparable level. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Schools ⌚ 146(3)

2. Similarly situated members

Police officer who was switched from class B member of South Dakota Retirement System (SDRS) to class A member due to disability was similarly situated to another police officer who was previ-

ously switched from class B member to class A member, and thus, officer had to be treated like second officer and awarded disability benefits by SDRS; change that occurred between grant of second officer's application for benefits and SDRS's denial of officer's application was addition to administrative rule and statute of language requiring that member's contributory service end before being eligible for disability allowance and this language was already contained in South Dakota Retirement System (SDRS) rule. *Yellow Robe v. Board of Trustees of South Dakota Retirement System*, 664 N.W.2d 517, 2003 SD 67. *Municipal Corporations* ⌚ 187(5)

3. Sufficiency of evidence

Record established that school employee who had served as teacher, assistant principal and principal and who had been transferred to teacher duties because of absenteeism due to illness and whose contract as teacher was not renewed was entitled to disability benefits. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Schools ⌚ 146(7)

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Note 3

Board's finding that 61-year-old school board employee, who had worked as teacher, assistant principal, and principal and who due to absences caused by illness was reassigned as teacher but her contract was not renewed because her excessive absences

were disruptive, was not entitled to disability benefits was not sustained by "substantial evidence." SDCL 3-12-46 et seq., 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Schools ⇌ 146(7)

3-12-99. Amount of monthly disability allowance

The disability allowance for the first thirty-six months shall be equal to fifty percent of the member's final average compensation immediately preceding the date of disability, increased by ten percent of such compensation for each child to a maximum of four such children.

Starting with the thirty-seventh month, if the member is eligible for and receiving disability benefits from social security, the disability allowance is equal to the greater of the amount paid during the first thirty-six months less the amount of primary social security or the amount of the member's unreduced accrued retirement allowance as of the date of disability. If the member's unreduced accrued retirement allowance is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. In no event may the annual amount of a disability allowance be less than twenty percent of the compensation on which the initial disability allowance was based.

Starting with the thirty-seventh month, if the member is not eligible for and receiving disability benefits from social security, the disability allowance is equal to the greater of twenty percent of the compensation on which the initial disability allowance was based or the amount of the member's unreduced accrued retirement allowance as of the date of disability. If the member's unreduced accrued retirement allowance is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. The disability allowance shall be paid only in the form of monthly installments.

Source: SL 1974, ch 35, § 53; SL 1994, ch 32, § 3; SL 2004, ch 40, § 2.

Commission Note

SL 2004, ch 40, § 12 provides:

"The provisions of this Act do not apply to benefits being paid pursuant to

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§ 3-12-100

Note 1

§ 3-12-95, 3-12-99, or 3-12-105 prior to July 1, 2004.”

Session Laws 1994, ch 32, § 5 provides that this section and § 3-12-99.1 are “applicable only to members whose contributory service ends and whose disability allowance is approved after July 1, 1994.”

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

Notes of Decisions

Retirement bonus 1

1. Retirement bonus

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of disability benefits payable under this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

3-12-99.1. Elimination of allowance as children become ineligible

That portion of a disability allowance that is payable on account of children shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-47(14). All other provisions in § 3-12-101 do not apply to members receiving a disability allowance pursuant to this chapter.

Source: SL 1994, ch 32, § 4.

Commission Note

Session Laws 1994, ch 32, § 5 provides that this section and § 3-12-99 are “applicable only to members whose contributory service ends and whose disability allowance is approved after July 1, 1994.”

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-100. Criteria for determining disability—Uniform application

The Board of Trustees shall set the criteria for determining the disability of members. Methods of disability determination shall be applied uniformly and consistently to all members applying for the disability benefits.

Source: SL 1974, ch 35, § 54.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Notes of Decisions

Similarly situated members 1

1. Similarly situated members

Police officer who was switched from class B member of South Dakota Retirement System (SDRS) to class A member

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Note 1

due to disability was similarly situated to another police officer who was previously switched from class B member to class A member, and thus, officer had to be treated like second officer and awarded disability benefits by SDRS; change that occurred between grant of second officer's application for benefits and SDRS's denial of officer's application was addition to administrative rule

and statute of language requiring that member's contributory service end before being eligible for disability allowance and this language was already contained in South Dakota Retirement System (SDRS) rule. *Yellow Robe v. Board of Trustees of South Dakota Retirement System*, 664 N.W.2d 517, 2003 SD 67. Municipal Corporations ☞ 187(5)

3-12-101. Deduction of other public benefits from disability allowance—Reduction when children become ineligible—Amount of allowance

Disability allowances shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems. Disability allowances payable on account of children shall be reduced when children become ineligible. In no event may the annual amount of a disability allowance be less than the greater of six percent of the compensation on which the disability allowance is based or six hundred dollars a year.

However, any disability allowance effective prior to July 1, 1994, and payable on or after that date may not be reduced by any benefit payable on account of a veteran's disability or from any insured or self-insured short-term disability plan sponsored by an employer and paid for by the employee or paid for under a salary reduction plan. Further, any disability allowance effective prior to July 1, 1994, and payable on or after July 1, 1995, may not be reduced by any benefit payable on account of a federal military retirement or a federal national guard retirement.

Source: SL 1974, ch 35, § 55; SL 1986, ch 37, § 7; SL 1993, ch 43, §§ 1, 2; SL 1994, ch 36; SL 1995, ch 20.

Administrative Code References

State retirement system, member receiving a disability allowance if service ended prior to July 1, 1994, see S.D. Admin. R. 62:01:04:10.

Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Library References

Officers and Public Employees
☞101.5(1).

3-12-102. Repealed by SL 1990, ch 38**Historical and Statutory Notes**

The repealed section related to reduction of disability allowance for earnings in employment.

3-12-103. Conversion of disability allowance to normal retirement allowance at retirement age

When a person who is receiving a disability allowance reaches age sixty-five, or at such later date when there are no eligible children, or if over age sixty at the time of commencement of disability, after a period of five years, his disability allowance shall be terminated and thereafter he shall receive the allowance payable for service retirement at that age, calculated on the projected compensation and projected service. If a person who received a disability allowance returns to employment prior to his normal retirement age, his credited service shall include the time of disability.

Source: SL 1974, ch 35, § 57; SL 1992, ch 33.

Administrative Code References

State retirement system
Refund of active contributions
made during period of disability,
see S.D. Admin. R. 62:01:02:06.
Termination of disability allowance,
see S.D. Admin. R.
62:01:04:05.01.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-103.1. Termination of disability allowance

A member's disability allowance shall terminate one year after the earliest of the following:

- (1) The member no longer is disabled;
- (2) The member no longer is subject to the medical condition that caused the disability;
- (3) The member refuses to undergo a medical examination requested by the system for the purpose of reviewing the medical condition that caused the disability;
- (4) The member returns to continuous employment in the position the member held prior to becoming disabled; or

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- (5) The member returns to continuous employment in a position of comparable level to the position the member held prior to becoming disabled.

However, a member's disability allowance shall terminate immediately if the member's disability allowance is converted to a service retirement allowance pursuant to § 3-12-103.

Source: SL 2006, ch 19, § 1.

3-12-104. Election of additional survivor protection—Commencement and termination of additional contribution

Within three hundred sixty-five days of becoming a member, within ninety days of attaining age thirty-five, or within ninety days of the first anniversary of a marriage, a member may elect to provide the member's spouse with additional survivor protection by increasing the member's contribution by an additional one and two-tenths percent of compensation, which additional contribution may not be matched by the member's employer. The additional contribution shall commence with the first payroll period following the date of the election. It shall continue until the earlier of the member's spouse attaining age sixty-five, the death or disability of the member, the death of the spouse, termination of employment or the termination of the marriage as defined in the rules of the board of trustees. The additional contribution may not be treated as a member contribution for purposes of determining the amount of refund of accumulated contributions. However, the contributions paid prior to January 1, 1979, shall be considered part of accumulated contributions for determining the amount of refund if the member terminates employment. Notwithstanding any other provision of this section, a member who is currently contributing to the system may terminate the additional survivor protection under this section, but all funds contributed for the additional survivor protection shall remain with the system and may not be considered as part of the member's accumulated contributions. For the purposes of implementing this section, the eight-tenths of one percent contribution for additional survivor protection was applied to all compensation received on or after January 1, 1979, regardless of when that compensation was earned, and

the one and two-tenths percent of compensation shall be applied to all compensation received on or after July 1, 2004, regardless of when that compensation was earned.

Source: SL 1974, ch 35, § 58; SL 1976, ch 40, § 4; SL 1977, ch 28, § 12; SL 1978, ch 33, §§ 1, 3; SL 1982, ch 32, § 6; SL 1995, ch 21; SL 1998, ch 15, § 20; SL 1998, ch 21, § 1; SL 2004, ch 41, § 1.

Administrative Code References	Westlaw	Key	Number	Search:
State retirement system, termination of marriage, see S.D. Admin. R. 62:01:01:02.			283k101.5(1).	
	C.J.S.	Officers and Public Employees	§§ 311 to 320.	

Library References
Officers and Public Employees
⇒101.5(1).

3-12-104.1. Extension of survivor protection option to current contributing members—Limitation on future extensions

The additional survivor protection option granted under § 3-12-104 is hereby extended to all current contributing members of the system for a period of three months commencing October 1, 1990, and ending December 31, 1990. In no event may the additional survivor protection be made available to a terminated vested member or to a member receiving a retirement allowance from the system. However, the additional survivor protection option may not be so extended again at any time after June 30, 2004.

Source: SL 1982, ch 32, § 7; SL 1986, ch 39; SL 1990, ch 39; SL 2004, ch 41, § 2.

Library References	C.J.S.
Officers and Public Employees ⇒101.5(1).	Officers and Public Employees §§ 311 to 320.
Westlaw	Key
283k101.5(1).	Number
	Search:

3-12-105. Amount of additional survivor protection benefits—Termination

The additional survivor protection payable under § 3-12-104, on the death of the member or expiration of benefits that may have been paid pursuant to subdivision 3-12-95(1) because there is no eligible child, entitles the surviving spouse of the member to an annual amount, payable in

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monthly installments, equal to forty percent of the member's final average compensation, multiplied by the improvement factor for each full twelve-month period between the earlier of the date of death or disability of the member and the date the payment of the benefit is due to commence. The additional survivor protection allowance shall continue until the surviving spouse dies or attains age sixty-five, whichever is earlier.

Source: SL 1974, ch 35, § 59; SL 1979, ch 30, § 3; SL 1982, ch 34, § 3; SL 2004, ch 40, § 3; SL 2004, ch 41, § 3.

Commission Note

SL 2004, ch 40, § 12 provides:
"The provisions of this Act do not apply to benefits being paid pursuant to § 3-12-95, 3-12-99, or 3-12-105 prior to July 1, 2004."
SL 2004, ch 41, § 4 provides:
"The provisions of section 3 of this Act do not apply to benefits being paid pursuant to § 3-12-105 prior to July 1, 2004."

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-106. Early retirement—Reduction of monthly payments

Any vested member can retire in the ten years preceding his normal retirement age and the retirement allowance shall be reduced by the lesser of the following:

- (1) One-fourth of one percent for each full month which remains between the date of commencement of payments and the date the member will reach his normal retirement age; or
- (2) One-fourth of one percent for each full month which remains between the date of commencement of payments and the date the member will reach his reduction age.

Source: SL 1967, ch 303, § 7 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-27.1; SL 1970, ch 25, § 6; SL 1974, ch 35, § 60; SL 1978, ch 34, § 1; SL 1986, ch 37, § 8.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Notes of Decisions

Retirement bonus 1

1. Retirement bonus

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of early retirement benefits under this section and § 3-12-91.

Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

3-12-107. Adjustment of early retirement benefits so greater initial benefits equal later lesser benefits when combined with social security

Any member who retires before being eligible for social security retirement benefits may elect to receive initial retirement benefit payments from the system in an amount greater than the standard benefit payments computed on the basis of the member's age and earnings at retirement. The greater amount, in conjunction with a later reduced amount, shall be the actuarial equivalent of the normal retirement allowance computed on the basis of age at retirement. The greater amount shall be paid until the member reaches the age of sixty-two, at which time the payment from the system shall be the reduced amount so that, as far as possible, the member's combined monthly retirement income from the system and social security shall approximately equal the greater amount paid prior to age sixty-two.

Source: SL 1974, ch 35, § 61; SL 2006, ch 20, § 1.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-108. Modified monthly allowance permitted—Time and effect of election

The Board of Trustees may provide under its rules and regulations for a modified monthly allowance to a member or beneficiary in lieu of the monthly benefit allowances payable under any provision of this chapter, provided that such allowance is not greater than the actuarial equivalent of the allowance due him under this chapter. Any such request must be made in writing on the form prescribed by and filed with the board prior to the date of the first payment of the unmodified allowance. An election of a modified form of payment is effective only after the date of acceptance by the board and may not be modified or revoked after that date without the further consent of the board.

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Source: SL 1968, ch 216, § 1; SDCL Supp, § 3-12-41; SL 1970, ch 25, § 11; SL 1974, ch 35, § 62.

Library References

Officers and Public Employees	C.J.S. Officers and Public Employees
§ 101.5(1).	§§ 311 to 320.
Westlaw Key Number Search:	
283k101.5(1).	

3-12-109. Duplicate benefits prohibited unless from another member's contributions

No person shall be entitled to receive a benefit provided under more than one provision of this chapter at one time, unless such benefit is derived from the contributions of another member.

Source: SL 1974, ch 35, § 63; SL 1977, ch 28, § 13.

Library References

Officers and Public Employees	C.J.S. Officers and Public Employees
§ 101.5(1).	§§ 311 to 320.
Westlaw Key Number Search:	
283k101.5(1).	

3-12-110. Balance of accumulated contributions refunded to beneficiary or family—Reversion to system of unclaimed payments

If the aggregate benefits payable to a member and the member's surviving spouse and minor children pursuant to §§ 3-12-75, 3-12-91, 3-12-92, 3-12-92.4, 3-12-92.6, 3-12-94, 3-12-95, 3-12-99, and 3-12-103, after all allowances currently or potentially payable under any provision of this chapter have terminated, do not total to the member's accumulated contributions including one hundred percent of employer contributions, then the balance equal to the difference between the accumulated contributions and total payments made to date shall be paid in a lump sum as provided in this section.

Amounts payable under this section shall be paid as follows:

- (1) To the beneficiary or entity designated by the member, if any is designated; or
- (2) If no beneficiary or entity is designated, then to the member's surviving spouse; or

- (3) If no beneficiary or entity is designated and there is no surviving spouse, then to all surviving children, irrespective of age, on a share alike basis; or
- (4) If no beneficiary or entity is designated, there is no surviving spouse, and there are no surviving children, then to the member's estate.

If no claim for payment due upon the death of a deceased member is made within three years from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

This section does not apply to any member who withdraws accumulated contributions pursuant to § 3-12-76, 3-12-76.1, or 3-12-77 after termination of employment, or to any nonvested member who dies after termination of employment.

Source: SL 1974, ch 35, § 64; SL 1986, ch 37, § 9; SL 1995, ch 24, § 16; SL 1997, ch 29, § 1; SL 1998, ch 15, § 21; SL 1999, ch 15, § 7; SL 2006, ch 21, § 1.

Administrative Code References

State retirement system, beneficiary designated by qualified domestic relations order, see S.D. Admin. R. 62:01:07:06.

Westlaw	Key	Number	Search:
	283k101.5(1).		
C.J.S. Officers and Public Employees			
§§ 311 to 320.			

Library References

Officers and Public Employees
 ⌘101.5(1).

3-12-111. Suspension of retirement allowance during reemployment prior to July 1, 2004—Recalculation of additional allowance

If a retired member whose benefits have been reduced pursuant to § 3-12-106 becomes employed as a permanent full-time employee by a participating unit prior to July 1, 2004, the payment of the member's retirement allowance, including the annual increase pursuant to § 3-12-88, shall be suspended during such period of reemployment. If the member remains in such reemployment for at least three years pursuant to the provisions of § 3-12-82 and then again retires, the member's

§ 3-12-111

PUBLIC OFFICERS AND EMPLOYEES

additional allowance shall be recalculated to consider only the member's credited service and final compensation earned during reentry.

Source: SL 1970, ch 25, § 13; SDCL Supp, § 3-12-29.3; SL 1974, ch 35, § 65; SL 1982, ch 32, § 8; SL 1986, ch 37, § 10; SL 1997, ch 28, § 2; SL 2004, ch 38, § 3.

Commission Note

SL 2004, ch 38, § 5 provides:

"The provisions of law in effect prior to July 1, 2004, continue to apply to any retired member whose benefits were not suspended pursuant to the provisions of § 3-12-111 and who reentered active status prior to July 1, 2004."

SL 1997, c. 28, §§ 3 and 4, provide:

"Section 3. The provisions of this Act apply to any member whose benefits are suspended pursuant to § 3-12-111 on the effective date of this Act. The provisions of this Act apply to any member whose benefits previously were suspended pursuant to § 3-12-111, if the member elects to have the provisions apply.

"Section 4. Any increase in a member's retirement benefit as a result of the provisions of this Act shall be prospective only from the effective date of this Act."

Library References

Officers and Public Employees
⇒101.5(1).

Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Notes of Decisions

Proration 2

Retirees under old system 1

1. Retirees under old system

Retirees under old law enforcement officers retirement system may return to work for the state and earn an additional benefit under the present retirement system, prior to normal retirement age, unless their annuity under the old system is suspended while so employed. Op.Atty.Gen. Opinion No. 79-4, 1979 WL 41889.

2. Proration

Suspension of 1/30 of monthly benefits for one day's work prior to retirement age is appropriate. Op.Atty.Gen. Opinion No. 78-52 (Nov. 6, 1978), 1978 WL 33921.

3-12-111.1. Suspension of retirement allowance during reemployment on or after July 1, 2004—Additional allowance—Reduction—Annual increase

If a retired member whose benefits have been reduced pursuant to § 3-12-106 becomes employed as a permanent full-time employee by a participating unit on or after July 1, 2004, the payment of the member's retirement allowance shall be suspended during the period of reemployment. If the member remains in reemployment for at least three years pursuant to the provisions of § 3-12-82, the member upon subsequent retirement shall receive an additional allowance based upon the member's credited service and final compensation earned

during the reentry. Only the member's credited service from the subsequent employment shall be taken into account in calculating a reduction pursuant to § 3–12–106, if any, in the member's additional allowance. In addition, the annual increase applied to the original allowance pursuant to § 3–12–88 shall be eliminated for the period of reemployment.

Source: SL 2004, ch 38, § 4.

**3–12–112. Benefits payable only as monthly allowance—
Lump-sum payments prohibited unless specified**

A member in the system may claim the benefits provided for in this chapter only in the form of a monthly benefit payment and only after such time as these benefits are payable. Unless otherwise specifically provided, there shall be no circumstances which shall allow a member or a former member of the system a lump-sum cash payment in lieu of the normal retirement allowance.

Source: SL 1967, ch 303, § 8; SDCL § 3–12–29; SL 1968, ch 216, § 1; SL 1970, ch 25, § 7; SL 1974, ch 35, § 66.

Library References

Officers and Public Employees
 ⌘ 101.5(1).
 Westlaw Key Number Search:
 283k101.5(1).
 C.J.S. Officers and Public Employees
 §§ 311 to 320.

Notes of Decisions

Benefit 1

1. Benefit

Terms "benefit" and "benefits" in the retirement provisions of parties' divorce settlement agreement was not ambiguous, and, thus, trial court was not warranted in finding there was never any agreement on division of husband's re-

tirement fund and determining wife's entitlement to portion of the fund outside contractual provision within the agreement; although word "benefit" was not described within the agreement, statute governing South Dakota Retirement System allowed husband upon retiring from system to claim his retirement "benefits" in the form of a monthly payment, which he did, and provision in settlement agreement entitled wife to benefits whenever husband should draw on his benefits. SDCL 3–12–47(11), 3–12–112. Divich v. Divich, 640 N.W.2d 758, 2002 SD 24. Husband And Wife ⌘ 279(2)

3–12–113. Time of termination of benefits

In the event of the death of a member who is receiving benefits under this chapter, or on whose account a benefit is payable or children are no longer qualified, the benefit payable to or on account of that person shall be terminated on the last day of the month in which an event occurs which effects a termination.

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Source: SL 1974, ch 35, § 67.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-114. Correction of errors—Adjustment to actuarial equivalent

Should any change or error in the records of the system or any participating unit result in any person receiving from the system more or less than he would have been entitled to receive had the records been correct, the administrator shall correct such error and, as far as practicable, shall adjust the payment in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled shall be paid.

Source: SL 1959, ch 84, § 38; SDC Supp 1960, § 15.3942; SL 1961, ch 255, § 40; SDCL §§ 9-15-68, 13-45-70; SL 1970, ch 25, § 13; SDCL Supp, § 3-12-44; SL 1974, ch 35, § 68.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw Key	Number	Search:		
283k101.5(1).				

3-12-115. Exemption of contributions and benefits from taxation and process

The rights of a person to a benefit, return of accumulated contributions, the benefit itself, any optional benefits and any other right accrued or accruing under the provisions of this chapter and all moneys belonging to the system are hereby exempt from any state, county, municipal, or other local tax and may not be subject to execution, garnishment, attachment, operation of bankruptcy or insolvency laws or any other process of law whatsoever and shall be unassignable, except as required under applicable law, including any qualified domestic relations order as defined in § 414(p) of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1985, or as is otherwise specifically provided in this chapter.

Source: SL 1959, ch 84, § 40; SDC Supp 1960, § 15.3943; SL 1961, ch 255, § 42; SDCL §§ 9-15-70, 13-45-69; SL 1970, ch 25, § 13; SDCL Supp, § 3-12-45; SL 1974, ch 35, § 69; SL 1985, ch 24, § 3.

SOUTH DAKOTA RETIREMENT SYSTEM

§ 3–12–117

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

Research References

ALR Library

Attachment or garnishment, employee
retirement pension benefits as ex-
empt from garnishment, attach-

ment, levy, execution, or similar
proceedings, 93 A.L.R.3d 711.
Construction And Application Of 28
U.S.C.A. Sec. 2403 (And Similar
Predecessor Provisions), Concern-
ing Intervention By United States
Or By State In Certain Federal
Court Cases Involving Constitution-
ality Of Statutes, 147 A.L.R.Fed.
613.

Treatises and Practice Aids

Norton Bankruptcy Law and Prac-
tice 2d CH 46 APP.

3–12–116. Lump-sum payments where designated beneficiary does not survive member—Reversion to system of unclaimed payments

If a designated beneficiary does not survive the member, any lump-sum payment that may be due shall be payable to the member's surviving spouse. If there is no surviving spouse, the payment shall be payable to all of the member's surviving children, irrespective of age, on a share-alike basis. If there is no surviving spouse and there are no surviving children, the payment shall be payable to the estate of the deceased member. If no claim for payment due upon the death of a deceased member is made within three years from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

Source: SL 1967, ch 303, § 8 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3–12–29.1; SL 1974, ch 35, § 70; SL 2006, ch 21, § 2.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–117. Investment of assets by investment council—Pooling of funds—Standards for investment

The State Investment Council as provided in § 4–5–12 is responsible for the investment of the assets of the system. The Investment Council may pool the several retirement funds for

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PUBLIC OFFICERS AND EMPLOYEES

investment purposes and the investment of such funds is not restricted by the provisions of § 4-5-26, but is governed by the provisions of § 4-5-27. However, the assets of the system may not be used as venture capital.

Source: SL 1974, ch 35, § 71; SL 1989, ch 39.

Library References				Notes of Decisions	
Officers and Public Employees				Venture capital investments	1
§ 101.5(1).					
Westlaw Key Number Search:				1. Venture capital investments	
283k101.5(1).				While this section indicates that the investment council has more flexibility in investing retirement funds, § 4-5-27 also applies in the setting of venture capital investments of the state retirement system. Op.Atty.Gen. Opinion No. 88-32, 1988 WL 483264.	
C.J.S. Officers and Public Employees					
§§ 311 to 320.					
Research References					
Treatises and Practice Aids					
Bogert - The Law of Trusts and Trustees					
§ 657.					

3-12-118. Quadrennial independent report on investment performance—Contents of report

The Board of Trustees shall retain the services of an independent contractor, not involved in the investment process, to make a report to the board not less than every four years on the investment performance results of the assets of the retirement funds. The report shall include, but not be limited to, the investment for the total portfolio and each major investment category thereof; a comparison of the investment return on the common stocks in the portfolio to market indices in general use and to the results achieved by other institutional investors of pension funds; and an appraisal of the success of the management of the actively traded bond portfolio, including a comparison of the return on the bonds in the portfolio to the bond indices in general use and a quantitative estimate of the aggregate gains or losses arising out of the portfolio transactions, both current exchanges and those that have to be worked out over time by a series of trades.

Source: SL 1974, ch 35, § 72.

3-12-119. Review of investment policy when return lower than average—Report to Governor and Legislature

In the event the investment return on the common stock portfolio or bond portfolio is lower than the average return

achieved by other institutional investors of pension funds, then the Investment Council shall review the way in which the assets are being invested and the sources of investment advice being utilized to determine what changes, if any, are desirable to produce an investment return equal to or greater than the average, and shall make a report to the Governor and the Legislature on the investment performance results and any changes necessary to improve the investment return.

Source: SL 1974, ch 35, § 73.

3-12-120. Annual actuarial valuation of system—Scope of valuation

To determine and verify the adequacy of the members and employer contributions to the system, an actuarial valuation of the system shall be made by an approved actuary annually.

The actuarial valuation shall include:

- (1) A demonstration of the relationship of the current member and employer contributions, expressed as a percentage of payroll, to the actuarial requirement; and
- (2) The current year's funded ratio as well as the ratios from the prior actuarial valuations performed after July 1, 1974.

Source: SL 1974, ch 35, § 74; SL 1996, ch 27; SL 2004, ch 42, § 13.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-120.1. Independent actuarial review of retirement system mandated—Issues

An independent actuarial review shall be completed of the South Dakota Retirement System, focusing upon issues of equity regarding member benefits, including, but not limited to, the class A alternate formula, class differences, length of service issues, purchase of credited service, cost of living allowance, death and disability benefits, married members, members with

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younger spouses, life expectancy, early retirement, and reemployment after retirement.

Source: SL 2000, ch 26, § 1.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–120.2. Committee to request proposals—Designation of actuary—Date of report

The Retirement Laws Committee shall submit a request for proposals, and shall designate an approved actuary to carry out the study no later than July 1, 2000. The approved actuary shall report its findings to the Retirement Laws Committee no later than December 1, 2000.

Source: SL 2000, ch 26, § 2.

3–12–120.3. Payment for review

This independent actuarial review shall be paid for out of the South Dakota Retirement System fund. Expenditures shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the administrator of the system.

Source: SL 2000, ch 26, § 3.

3–12–121. Actuarial assumptions on which valuation based—Report of change

The actuarial valuation required by § 3–12–120 shall be based on actuarial assumptions adopted by the Board of Trustees as a result of an actuarial experience analysis. The board may not make any change in the actuarial assumptions unless the approved actuary retained to make the actuarial valuation certifies that the change is reasonable. If the board makes any such change, it shall report the change to the Governor and to the Retirement Laws Committee. The report shall include the actuary's and board's analysis of the conditions that led to the change.

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Source: SL 1974, ch 35, § 76; SL 1980, ch 31, § 2; SL 2004, ch 42, § 2.

Library References	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 311 to 320.
⇒101.5(1).	
Westlaw Key Number Search:	
283k101.5(1).	

3–12–122. System funding review—Report required upon existence of specified conditions—Recommended changes

The board shall review the funding of the system and shall make a report to the Governor and the Retirement Laws Committee if any of the following exists as of the latest annual actuarial valuation of the system:

- (1) The contributions do not equal the actuarial requirement for funding;
- (2) The funded ratio is less than eighty percent, or a ratio based on the market value of assets is less than eighty percent; or
- (3) The market value of assets is less than ninety percent of the actuarial value of assets.

The report shall include an analysis of the conditions required for an improvement of the funded status of the system and recommendations for the circumstances and timing for any future benefit changes in actuarial assumptions. If any of the conditions set out by this section exist for a period of three consecutive annual actuarial valuations, benefit reductions, contribution changes, or both, shall be recommended by the board to the Governor and the Retirement Laws Committee, effective as soon as possible, to improve the funded status of the system.

Source: SL 1974, ch 35, § 75; SL 1986, ch 37, § 12; SL 2004, ch 42, § 1.

Library References	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 311 to 320.
⇒101.5(1).	
Westlaw Key Number Search:	
283k101.5(1).	

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3-12-123. Intent to protect previously retired members of systems

It is the intent of the Legislature of the State of South Dakota to provide improved benefits for the already retired members of the retirement systems consolidated into the South Dakota Retirement System created by this chapter and to provide the financial resources necessary to adequately pay for the improved benefits.

Source: SL 1974, ch 35, § 77.

Library References

Officers and Public Employees

C.J.S. Officers and Public Employees

§§ 311 to 320.

⌘101.5(1).

Westlaw Key Number Search:
283k101.5(1).

3-12-124. Increase in benefits for previously retired members of systems

Any retired members of the Supreme and Circuit Court Judicial Retirement System, district county court and municipal court judges retirement program, South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System, South Dakota Public Employees Retirement System and State Cement Plant Retirement Program as of June 30, 1974, who were receiving or eligible to receive a retirement allowance shall be entitled to an increased monthly annuity commencing with the payment due on or after July 1, 1974, equal to the greater of:

- (1) One hundred ten percent of the annuity he was entitled to on June 30, 1974, under the retirement system of which he is a retired member, or
- (2) Ten dollars times the years of credited contributory service or fraction thereof, under the retirement system of which he is a retired member, to a maximum of one hundred dollars.

The time, manner and form of payment of the retirement allowance is not modified by the change in benefits provided by this section.

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§ 3-12-126

Source: SL 1974, ch 35, §§ 78, 79.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-125. Adjustment of increase for retired members electing optional payment or early retirement

The amount calculated under subdivision 3-12-124(2) will be adjusted to its actuarial equivalent if the retired member had elected an optional form of payment other than the normal form provided by the retirement system of which he is a retired member, or if the age of a retired member is less than the normal retirement age necessary for receiving a normal retirement allowance as provided by the retirement system of which he is a retired member.

Source: SL 1974, ch 35, § 79.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

3-12-126. Previously retired members paid from consolidated fund

Notwithstanding the repeal on July 1, 1974, of chapters 3-12; 3-13; 9-15; 13-45; certain provisions of chapter 16-8; chapter 16-11A, and certain provisions of chapter 33-13, persons retired under those programs, and teachers retired under the provisions of chapter 51 of the Session Laws of 1939, as amended, who retired pursuant to that act prior to July 1, 1951, and beneficiaries of deceased retirees of those programs, to the extent they are being paid benefits on July 1, 1974, shall be secured in the benefits provided by those provisions from the fund established pursuant to this chapter.

Source: SL 1974, ch 35, § 82.

Library References				C.J.S. Officers and Public Employees
Officers and Public Employees				§§ 311 to 320.
⇒101.5(1).				
Westlaw	Key	Number	Search:	
283k101.5(1).				

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PUBLIC OFFICERS AND EMPLOYEES

3–12–127. Members of consolidated systems entitled to benefits of prior law—Retention by administrator of Compiled Laws and supplements

Notwithstanding the repeal on July 1, 1974, of chapters 3–12; 3–13; 9–15; 13–45; certain provisions of chapter 16–8; chapter 16–11A; and certain provisions of chapter 33–13, all members of systems established thereunder shall be entitled to retire at the age, with the length of service and the benefits available to them under those provisions or the provisions of this chapter. For the purposes of this section, the administrator shall retain as part of the permanent files of his office all volumes of the South Dakota Compiled Laws, together with the 1973 pocket supplements thereto.

Source: SL 1974, ch 35, § 83; SL 1975, ch 39, § 7.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).
C.J.S. Officers and Public Employees
§§ 311 to 320.

1. Return to work

Retirees under old law enforcement officers retirement system may return to work for the state and earn an additional benefit under the present retirement system. Op.Atty.Gen. Opinion No. 79-4, 1979 WL 41889.

Notes of Decisions

Return to work 1

3–12–128. Citation of chapter

This chapter shall be cited as the South Dakota Retirement Act.

Source: SL 1974, ch 35, § 84.

3–12–129. Calculating benefits of air rescue firefighter

For purposes of determining the benefits of an air rescue firefighter, for credited service earned prior to July 1, 1992, the benefits shall be calculated pursuant to § 3–12–91 and for credited service after June 30, 1992, the benefits shall be calculated pursuant to § 3–12–92.

Source: SL 1992, ch 34, § 3.

3-12-130. Conversion of credited service

A current contributing Class B member other than a justice, judge, or magistrate judge, may convert credited service as a county sheriff or deputy county sheriff prior to January 1, 1980, or credited service as a county sheriff or deputy county sheriff while not certified from January 1, 1980, to June 30, 1988, inclusive; credited service as a policeman while not certified from July 1, 1983, to June 30, 1988, inclusive; credited service as a penitentiary correctional staff member prior to July 1, 1978; credited service as a conservation officer prior to July 1, 1983; credited service as a parole agent prior to July 1, 1991; and credited service as an air rescue firefighter prior to July 1, 1992, from credited service as a Class A member with benefits provided in accordance with § 3-12-91 to credited service as a Class B member other than a justice, judge, or magistrate judge, with benefits provided in accordance with § 3-12-92, by election to make, or have made on the member's behalf, contributions based on the higher of the member's current compensation, or the member's final average compensation calculated as if the member retired on the date of election, at an actuarially-determined percentage times each year of service for which the member wishes to receive such Class B credit. The provisions of this section also apply to a current contributing Class B member, other than a justice, judge, or magistrate judge, who previously has purchased equivalent public service pursuant to the provisions of § 3-12-84.

Payment of a deposit with the system for the conversion of credited service in accordance with this section shall be determined and due at the time the notice of intention to make the payment is received by the system. The amount due may be paid by periodic level installments over a period of up to ten years, the value of which, if discounted for interest at the current effective rate as established by the board pursuant to § 3-12-121 for investment return for purposes of the actuarial valuation, is equal to the amount due at the date of the notice. If a member dies before completion of the installment payments, the surviving spouse may complete the payments due the system, but unless the payments are being made by a participating unit, the amount shall be paid in full within ninety

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days of the member's death or retirement. If the periodic payments are not completed or paid when due, the administrator may make a pro rata adjustment to the credited service, benefits payable under this chapter or schedule of payments to allow for the default.

If the credited service of any member or group of members becomes Class B credited service on a prospective basis on or after July 1, 1993, the prior credited service as a Class A member may be converted to Class B credited service in accordance with this section. If a jailer becomes a Class B member other than a justice, judge, or magistrate judge pursuant to subdivision 3-12-47(25) or subdivision 3-12-47(55), the jailer is eligible to convert prior credited service as a jailer under this section.

Source: SL 1993, ch 44, § 1; SL 1997, ch 27, § 3; SL 1999, ch 14, § 3; SL 2003, ch 24, § 1; SL 2004, ch 39, § 3; SL 2004, ch 40, § 9.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-130.1. Purchase of certain public service as class B service

If a current contributing class B member of this system, other than a justice, a judge, or a magistrate judge, has equivalent public service for which the member is not entitled to retirement benefits from another public retirement system, the member may elect to deposit or have deposited on the member's behalf an amount equal to an actuarially-determined percentage times the appropriate class B rate of contribution multiplied by the higher of the member's annual compensation at the time of making the election, or the member's final average compensation calculated as if the member retired on the date of the election, for each year of equivalent public service for which the member wishes to receive credit as a class B member.

Source: SL 1997, ch 27, § 2; SL 2004, ch 39, § 4; SL 2004, ch 40, § 10.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–131. Eligibility for benefits upon becoming full-time employee within twelve months after withdrawal

Notwithstanding any provision of this chapter to the contrary, whenever a member withdraws accumulated contributions under § 3–12–76 and becomes a permanent full-time employee within twelve months after withdrawal, contributions must have been made to the system for a period of twelve consecutive months before the member is eligible for benefits pursuant to § 3–12–95. The member shall furthermore be ineligible to apply for additional survivor protection pursuant to § 3–12–104 as a new member of the system and to be eligible for a disability allowance pursuant to § 3–12–98, the member must have at least three years of contributory service since the date of the last withdrawal unless the member was disabled by accidental means while performing the usual duties for the employer.

Source: SL 1993, ch 39, § 2.

Library References

Officers and Public Employees
§ 101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3–12–132. Retirement benefits for certain city of Aberdeen employees

To determine the retirement benefits of Aberdeen ambulance attendants, campus security officers, and court services officers, for credited service earned prior to July 1, 1993, the benefits shall be calculated pursuant to § 3–12–91 and for credited service after June 30, 1993, the benefits shall be calculated pursuant to § 3–12–92.

Source: SL 1993, ch 38, § 3.

3–12–133. Aberdeen firefighters to participate in system

On July 1, 1994, all members of the municipality of Aberdeen firemen's relief and pension fund on June 30, 1994, including

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all retirees and benefit recipients, shall become members of the system. Each individual shall receive credited service under the system for all service earned under the municipality of Aberdeen firemen's relief and pension fund.

Source: SL 1994, ch 37, § 1.

Library References	C.J.S. Municipal Corporations
Municipal Corporations ¶200(2).	§§ 574, 589.
Westlaw Key Number Search:	
268k200(2).	

3-12-134. Eligible benefits for Aberdeen firefighters

Each individual described in § 3-12-133 shall receive the same benefit provided by the municipality of Aberdeen firemen's relief and pension fund on June 30, 1994, and the benefit shall be improved on July 1, 1994, and thereafter in accordance with § 3-12-88. The benefits of the individuals described in § 3-12-133 who are entitled to receive benefits from the municipality of Aberdeen firemen's relief and pension fund as of July 1, 1994, shall be paid from the fund established by this chapter.

Source: SL 1994, ch 37, § 2.

3-12-135. Amount to be paid by municipality of Aberdeen

The municipality of Aberdeen shall pay to the system an amount equal to the present value of all benefits earned by individuals described in § 3-12-133 up to July 1, 1994, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1992. That amount shall be determined on July 1, 1994, by the system's actuary. Any amount to be paid to the system by the municipality of Aberdeen which exceeds the value of the assets of the municipality of Aberdeen firemen's relief and pension fund, determined as of the date of transfer, shall be paid pursuant to the provisions of § 3-12-69.

Source: SL 1994, ch 37, § 3.

3-12-136. Funds from Aberdeen municipality considered member contributions

All amounts transferred to the system from the municipality of Aberdeen firemen's relief and pension fund which, under the

Aberdeen firemen's relief and pension fund, were credited to the accounts of individual employees are considered member contributions under this chapter.

Source: SL 1994, ch 37, § 4.

3-12-138. Repealed by SL 1997, ch 26, § 6

Historical and Statutory Notes	allowed for certain retirees depending
The repealed section related to additional percentage of final compensation	on date and circumstances of retirement.

3-12-139. No additional benefits where allowance terminated prior to July 1, 1994

No member or beneficiary whose retirement allowance terminated prior to July 1, 1994, may receive any additional benefits pursuant to § 3-12-138.

Source: SL 1994, ch 34, § 7.

3-12-140. Regaining credited service lost due to mandatory refunds

Any current contributing member who was subject to the withdrawal provisions as a nonvested member from the South Dakota Retirement System or any predecessor public retirement system may redeposit accumulated contributions with compound interest at the current effective rate between the date of withdrawal and the date of redeposit in accordance with § 3-12-80, or to purchase the prior credited service in accordance with § 3-12-83 to include any applicable noncontributory service in addition to the credited service so purchased, if the redeposit or purchase is initiated between July 1, 1995, and June 30, 1996.

Source: SL 1995, ch 22.

Library References	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 311 to 320.
⇒101.5(1).	
Westlaw Key Number Search:	
283k101.5(1).	

§ 3-12-141

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3-12-141. Employer certification of inability to provide effective accommodations or comparable employment

No application for disability benefits under this chapter may be determined until the employer has certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide either effective accommodations to the member in the member's current position or comparable level employment in another position to the member.

Source: SL 1995, ch 23, § 2; SL 2006, ch 19, § 2.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-142. Disability documentation inadmissible for proceedings relative to workers' compensation

An application for disability benefits pursuant to this chapter, any associated evidence and documents, and the disability determination and decision related thereto shall be inadmissible and nondeterminative for any associated proceeding relative to Title 62.

Source: SL 1995, ch 23, § 3.

Library References

Officers and Public Employees
⇒101.5(1).
Westlaw Key Number Search:
283k101.5(1).

C.J.S. Officers and Public Employees
§§ 311 to 320.

3-12-143. Maximum amount of disability allowance—Reporting earned income

For the first thirty-six months of a disability allowance provided by this chapter, the maximum amount that a member may receive in any calendar year from the disability allowance and earned income, as defined in § 32(c)(2) of the Internal Revenue Code of 1986, is one hundred percent of the member's final average compensation. Starting with the thirty-seventh

month of such disability allowance, the maximum amount that a member may receive in any calendar year from disability allowances provided by the federal Social Security Act equal to the primary insurance amount, the disability allowance provided by this chapter and earned income, as defined in § 32(c)(2) of the Internal Revenue Code of 1986, is one hundred percent of the member's final average compensation. The maximum amount shall be indexed for each full fiscal year during which the member is eligible for such disability allowance by the improvement factor defined in subdivision 3-12-47(42). Any amount exceeding this maximum amount shall reduce each monthly disability allowance payable pursuant to § 3-12-99 in the following fiscal year on a pro rata basis.

Any member eligible to receive a disability allowance shall report to the system in writing any earned income of the member. The report shall be filed with the system no later than May thirty-first following the end of each calendar year in which a disability allowance is paid. A disabled member may file a signed copy of the member's individual income tax return in lieu of the report. No report or return need be filed for the calendar year in which the member dies or converts to a normal or early retirement benefit under this chapter. The disability allowance of any member failing to file a report or return as required in this section shall be suspended until the report or return is filed. The reduction may occur, however, only if a disability allowance is being paid by the system, but may not reduce the disability allowance below the minimum provided for in § 3-12-99. For members with a disability in effect before July 1, 1995, the first report is due on or before May 31, 1996.

This section applies to any member receiving or entitled to receive a disability allowance pursuant to this chapter.

Source: SL 1995, ch 23, §§ 4, 5; SL 2004, ch 40, § 4.

Administrative Code References

State retirement system, disability allowance, income to be included in earned income, see S.D. Admin. R. 62:01:04:13.

Westlaw	Key	Number	Search:
	283k	101.5(1).	
	C.J.S.	Officers and Public Employees	
		§§ 311 to 320.	

Library References

Officers and Public Employees
⇒101.5(1).

**§§ 3-12-144 to 3-12-152 PUBLIC OFFICERS AND EMPLOYEES
Repealed**

**3-12-144 to 3-12-152. Repealed by SL 1998, ch 15, §§ 22 to
30**

Historical and Statutory Notes

Section 3-12-144 related to election to provide portable retirement option.

Section 3-12-145 related to becoming a participating unit, notice, discontinuing offer of portable retirement option.

Section 3-12-146 related to choosing to become electing member, effect.

Section 3-12-147 related to eligibility of electing member for disability allowance, additional contribution required.

Section 3-12-148 related to eligibility of electing member for family benefit, additional contribution required.

Section 3-12-149 related to participation of electing member in additional survivor protection.

Section 3-12-150 related to amount of withdrawal by electing member upon termination of employment.

Section 3-12-151 related to redeposit of withdrawn contributions upon reemployment of electing member, terms and conditions.

Section 3-12-152 related to recapture or purchase of electing member's prior credited service not considered employer contribution.

3-12-153. Mitchell firefighters as members of system

On July 1, 1996, all members of the City of Mitchell firemen's pension plan as of June 30, 1996, including all retirees, vested inactive members, and benefit recipients, shall become members of the system. Each member shall receive credited service under the system for all service earned under the City of Mitchell firemen's pension plan.

Source: SL 1996, ch 28, § 1.

Library References

Municipal Corporations ⌘200(2).
Westlaw Key Number Search:
268k200(2).

C.J.S. Municipal Corporations
§§ 574, 589.

**3-12-154. Benefits for Mitchell firefighters—Improvement
factor**

Each retired member or benefit recipient described in § 3-12-153 shall receive the same benefit under the form of annuity provided by the City of Mitchell firemen's pension plan as in effect on June 30, 1996. Each benefit shall continue to be improved on July 1, 1996, and thereafter by a three percent simple improvement factor, as bargained and agreed to by the city of Mitchell. The benefits of members described in § 3-12-153 who are entitled to receive benefits from the city of

Mitchell firemen's pension plan as of July 1, 1996, shall be paid from the fund established by this chapter and funded pursuant to § 3-12-156.

Source: SL 1996, ch 28, § 2.


3-12-155. Retirement of Mitchell firefighters

Upon retirement, each member described in § 3-12-153 who is a vested inactive member on July 1, 1996, or an active firefighter in the employ of the city of Mitchell on July 1, 1996, shall receive the greater of:

- (1) The member's retirement allowance calculated under this chapter; or
- (2) The member's retirement allowance calculated under the city of Mitchell firemen's pension plan based on credited service up to June 30, 1996 and compensation up to June 30, 1996, and utilizing the plan's benefit terms, benefit formula and improvement factor.

In either case, the retirement allowance shall be paid from the fund established by this chapter and funded pursuant to §§ 3-12-156 and 3-12-71.

Source: SL 1996, ch 28, § 3.

Library References
Municipal Corporations  200(2).
Westlaw Key Number Search:
268k200(2).

C.J.S. Municipal Corporations
§§ 574, 589.

3-12-156. Amount of payment to system by city of Mitchell

The city of Mitchell shall pay to the system an amount equal to the present value of all benefits earned by the members described in § 3-12-153 up to July 1, 1996, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1996. That amount shall be calculated as of the close of business on June 30, 1996, by the system's actuary. Any amount to be paid to the system by the city of Mitchell which exceeds the value of the assets of the city of Mitchell firemen's pension plan, calculated as of the date of transfer of such

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assets, may be paid in periodic installments as provided in § 3-12-69.

Source: SL 1996, ch 28, § 4.

3-12-157. Transfer of city of Mitchell firemen's pension plan funds as member contributions

All amounts transferred to the system from the city of Mitchell firemen's pension plan which under the plan were credited to the accounts of individual employees are considered member contributions under this chapter.

Source: SL 1996, ch 28, § 5.

3-12-158. Information required of city of Mitchell

For purposes of payment of retiree benefits pursuant to § 3-12-154 and to calculate the minimum benefit pursuant to § 3-12-155, the city of Mitchell shall provide the following information:

- (1) Each retired firefighter's benefit as of June 30, 1996, plus that benefits' annual increase;
- (2) Each active or inactive vested firefighter's accrued benefit as of June 30, 1996;
- (3) Each active firefighter's final average compensation as of June 30, 1996;
- (4) Each active firefighter's credited service as of June 30, 1996;
- (5) Each active firefighter's employee contributions, with interest credited thereon, as of June 30, 1996; and
- (6) The annual rate of salary for a first-class firefighter as of June 30, 1996.

Source: SL 1996, ch 28, § 6.

Research References

Forms

19A Am. Jur. Pl. & Pr. Forms Pensions & Retirement Funds § 13.

3–12–159. Huron firefighters as members of system

On July 1, 1998, all members of the city of Huron firemen pension fund as of June 30, 1998, including all retirees, any deferred vested members and any benefit recipients, shall become members of the system. Each active member shall receive credited service under the system for all service earned under the city of Huron firemen pension fund.

Source: SL 1998, ch 22, § 1.

Library References
Municipal Corporations \S 200(2).
Westlaw Key Number Search:
268k200(2).

C.J.S. Municipal Corporations
 $\S\S$ 574, 589.

3–12–160. Benefits for Huron firefighters—Improvement factor

Each retired member, any benefit recipient, or any deferred vested member described in § 3–12–159 and in such status prior to July 1, 1998, shall receive the member's previously selected annuity option as provided under the city of Huron firemen pension fund as in effect on June 30, 1998, but is not eligible for a benefit pursuant to § 3–12–94. Each such benefit in effect prior to July 1, 1998, shall be improved on that date and thereafter in accordance with § 3–12–88. The retirement benefit of a deferred vested member that goes into effect after July 1, 1998, shall be improved in accordance with § 3–12–88, but the member's final average compensation may not be increased prior to retirement by the improvement factor pursuant to § 3–12–75. The benefits of members described in § 3–12–159 who are entitled to receive benefits from the city of Huron firemen pension fund prior to July 1, 1998, shall be paid from the fund established by this chapter and funded pursuant to § 3–12–162.

Source: SL 1998, ch 22, § 2; SL 2004, ch 40, § 11.

3–12–161. Retirement of Huron firefighters

Upon retirement, each member described in § 3–12–159 who is an active firefighter in the employ of the city of Huron on July 1, 1998, shall receive the greater of:

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- (1) The member's retirement allowance calculated under this chapter; or
- (2) The member's retirement allowance calculated under the city of Huron firemen pension fund based on credited service up to June 30, 1998, and compensation up to June 30, 1998, and utilizing the fund's benefit terms and benefit formula.

In either case, such retirement benefit shall be improved in accordance with the provisions of § 3-12-88, shall be paid from the fund established by this chapter and shall be funded pursuant to § 3-12-162 and § 3-12-71. Any allowance granted pursuant to subdivision (2) may not include a benefit pursuant to § 3-12-94.

Source: SL 1998, ch 22, § 3.

Library References
Municipal Corporations \Leftrightarrow 200(2).
Westlaw Key Number Search:
268k200(2).

C.J.S. Municipal Corporations
§§ 574, 589.

3-12-162. Amount of payment to system by City of Huron

The city of Huron shall pay to the system an amount equal to the present value of all benefits earned by the members described in § 3-12-159 up to July 1, 1998, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1998. That amount shall be calculated as of the close of business on June 30, 1998, by the system's actuary. Any amount to be paid to the system by the city of Huron which exceeds the value of the assets of the city of Huron firemen pension fund, calculated as of the date of transfer of such assets, may be paid in periodic installments as provided in § 3-12-69.

Source: SL 1998, ch 22, § 4.

3-12-163. Transfer of city of Huron firemen's pension plan funds as member contributions

All amounts transferred to the system from the city of Huron firemen pension fund which under the fund were credited to

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Transferred

the accounts of individual members are considered member contributions under this chapter.

Source: SL 1998, ch 22, § 5.

3-12-164. Information required of city of Huron

For purposes of payment of retirement or other benefits pursuant to § 3-12-160 and to calculate the minimum benefit pursuant to § 3-12-161, the city of Huron shall provide the following information:

- (1) Each retired firefighter's benefit and form of payment as of June 30, 1998;
- (2) Each active or deferred vested firefighter's accrued benefit as of June 30, 1998;
- (3) Each active firefighter's final average compensation as of June 30, 1998.
- (4) Each active firefighter's credited service as of June 30, 1998;
- (5) Each active firefighter's employee contributions, with interest credited thereon as of June 30, 1998; and
- (6) The annual rate of salary for a first-class firefighter as of June 30, 1998.

Source: SL 1998, ch 22, § 6.

3-12-165 to 3-12-188. Transferred to §§ 3-13A-1 to 3-13A-25 by SL 2005, ch 28, § 1

CHAPTER 3-13

DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Section

3-13-1 to 3-13-48. Repealed.

3-13-49. State deferred compensation plan—Agreements in writing—Administrative charge—Amounts deferred remitted to state deferred compensation fund.

3-13-49.1. Political subdivisions.

3-13-50. Administration of plan—Hiring and remuneration of additional employees.

3-13-51. Repealed.

3-13-51.1. Participants may invest funds in investments approved by state investment officer—Investment alternatives to be offered—Investment officer as fiduciary.

3-13-51.2. Administrator and investment officer authorized to execute necessary contracts—Transfer of contracts in effect on July 1, 2000.

3-13-51.3. Default designation of new investment selection upon termination of participant's contract.

3-13-52. Liability of plan or employer—Liability of board member or administrator for action taken in bad faith.

3-13-53. State deferred compensation fund—Deposit of deferred compensation—Payment of expenditures from fund—Administrative expenses.

3-13-54. Adoption of rules—Limitation on availability of accumulated deferred compensation to participant—Exception.

3-13-55. Definition of terms.

Administrative Code References

State retirement system, deferred compensation plan, see S.D. Admin. R. 62:03:01:01 et seq.

3-13-1 to 3-13-38. Repealed by SL 1974, ch 35, § 80

Historical and Statutory Notes

Section 3-13-1 related to definition of terms.

Section 3-13-2 related to retirement system established, officers and agents covered.

Section 3-13-3 related to effective dates of coverage.

Section 3-13-4 related to establishment of retirement board, composition.

Section 3-13-4.1 related to direction and supervision by Bureau of Personnel, independent functions retained by board.

Section 3-13-5 related to terms of elective members of board, vacancies, oath of members.

Section 3-13-6 related to annual election of board members.

Section 3-13-7 related to organization and meetings of Retirement Board.

Section 3-13-8 related to legal adviser of board.

Section 3-13-9 related to administrative expense, reimbursement of expenses of board members.

DEFERRED COMPENSATION PLAN

§§ 3-13-39 to 3-13-48

Repealed

Section 3-13-10 related to rules and regulations, determination of eligibility for coverage.

Section 3-13-11 related to actuarial data and investigations.

Section 3-13-12 related to required membership in retirement system.

Section 3-13-13 related to members' contributions, salary deductions.

Section 3-13-14 related to commencement of members' contributions, prior service credit for persons re-entering service.

Section 3-13-15 related to contributions for period of military absence, military service credit.

Section 3-13-16 related to state contributions to retirement fund.

Section 3-13-17 related to time of transfer of monthly state contributions.

Section 3-13-18 related to contributions credited to retirement fund, investment of surplus.

Section 3-13-19 related to notice to auditor of personnel changes.

Section 3-13-20 related to designation of beneficiaries by contributors.

Section 3-13-21 related to prior service credit, certification conclusive against board, periods of absence without pay.

Section 3-13-22 related to retirement on service retirement allowance.

Section 3-13-23 related to amount of service retirement allowance.

Section 3-13-24 related to optional retirement with reduced allowance.

Section 3-13-25 related to disability retirement, amount of allowance, disability resulting from service.

Section 3-13-26 related to involuntary discontinuance of service before retirement age, election of refund or annuity.

Section 3-13-27 related to compulsory retirement, annuity or refund.

Section 3-13-28 related to death before receiving value of annuities, payments to beneficiary.

Section 3-13-29 related to optional allowances for beneficiaries with reduced allowance for member.

Section 3-13-30 related to beneficiary's allowance following death in course of employment.

Section 3-13-31 related to refund of contributions on voluntary resignation or discharge for cause, state contributions remain in fund.

Section 3-13-32 related to refusal or suspension of state annuity where death or injury caused by fault of member.

Section 3-13-33 related to revocation or suspension of annuity to beneficiary convicted of felony.

Section 3-13-34 related to correction of errors and adjustment of payments.

Section 3-13-35 related to monthly payment of allowance, restrictions on changes in amount.

Section 3-13-36 related to annuities and refunds exempt from tax, process or assignment.

Section 3-13-37 related to subrogation of state to rights against third persons, excess recovery paid to contributor or beneficiary.

Section 3-13-38 related to false and fraudulent statements and records, penalty.

3-13-39 to 3-13-48. Repealed by SL 1987, ch 38, §§ 8 to 17

Historical and Statutory Notes

Section 3-13-39 related to deferred compensation authorized, investment of deferred amount.

Section 3-13-40 related to establishment of deferred compensation trust, approval and administrative duties, board of trustees as trust.

Section 3-13-41 related to state employees' plan, administration by labor department, participation agreements,

retirement system contributions unaffected.

Section 3-13-42 related to investment of state employees' deferred amounts.

Section 3-13-43 related to subd. employees' plan, participation agreements.

Section 3-13-44 related to contract for subd. plan with labor department.

Section 3-13-45 related to investment of subd. funds.

Section 3-13-46 related to investment offers by unlicensed persons prohibited.

§§ 3-13-39 to 3-13-48 PUBLIC OFFICERS AND EMPLOYEES
Repealed

Section 3-13-47 related to limitation of financial liability of employers. Section 3-13-48 related to other local plans not prohibited.

3-13-49. State deferred compensation plan—Agreements in writing—Administrative charge—Amounts deferred remitted to state deferred compensation fund

The board may establish the South Dakota deferred compensation plan for state government and political subdivision governments as determined by the board. Any eligible person wishing to participate shall execute such agreements as the board may require and shall specify in writing the amount of compensation to be deferred. Such agreement shall authorize reduction of compensation by the amount specified plus an administrative charge set by the board. The employer of each participating employee shall remit all amounts so deferred to the South Dakota deferred compensation fund, along with such documentation as may be required, no later than ten days after each payday. No deferral of compensation under this chapter may reduce compensation for the purpose of calculation of contributions and benefits under chapters 3-12 and 3-12A.

Source: SL 1987, ch 38, § 1.

Library References

C.J.S. States § 114.

States ⌘64.1(4).

Westlaw Key Number Search:
360k64.1(4).

3-13-49.1. Political subdivisions

Notwithstanding the provisions of § 3-13-49, any political subdivision may establish a deferred compensation program for its employees. Participation in such program shall be by written agreement between the employees and the governing body of the political subdivision. The agreement shall provide for the deferral of compensation and the investment and administration of such funds.

Source: SL 1989, ch 43.

Library References

C.J.S. Municipal Corporations §§ 649 to 660.

Municipal Corporations ⌘220(9).

Westlaw Key Number Search:
268k220(9).

3-13-50. Administration of plan—Hiring and remuneration of additional employees

The administrator shall administer the plan. The administrator may hire additional employees as may be required and shall set the remuneration of such employees.

Source: SL 1987, ch 38, § 2.

3-13-51. Repealed by SL 2000, ch 27, § 1**Historical and Statutory Notes**

The repealed section related to investment of funds.


3-13-51.1. Participants may invest funds in investments approved by state investment officer—Investment alternatives to be offered—Investment officer as fiduciary

Funds held by the fund may be invested by plan participants in such investments as are deemed appropriate by the state investment officer, including, but not limited to, annuity contracts. The state investment officer is authorized to enter into contracts for investment alternatives and to offer internal investment alternatives, and the plan administrator is authorized to transfer funds to, from, and among the respective investment alternatives. The state investment officer shall be held to the standard of conduct of a fiduciary and shall carry out all functions solely in the interests of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law.

Source: SL 2000, ch 27, § 2.

Library References

C.J.S. States § 114.

States  64.1(4).

Westlaw Key Number Search:
360k64.1(4).

3-13-51.2. Administrator and investment officer authorized to execute necessary contracts—Transfer of contracts in effect on July 1, 2000

The administrator shall execute any agreements as are necessary to carry out the provisions of this chapter, except such

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agreements as are executed by the state investment officer pursuant to § 3-13-51.1. Any contract for an investment alternative in effect on July 1, 2000, is hereby transferred by operation of law to the state investment officer as of July 1, 2000.

Source: SL 2000, ch 27, § 4.

3-13-51.3. Default designation of new investment selection upon termination of participant's contract

If a contract with a vendor terminates and a participant fails to notify the third-party administrator of the participant's new investment selection before the contract terminates, the third-party administrator shall transfer that participant's account to the investment alternative designated by the state investment officer.

Source: SL 2000, ch 27, § 5.

Library References

C.J.S. States § 114.

States ⌘64.1(4).

Westlaw Key Number Search:
360k64.1(4).

3-13-52. Liability of plan or employer—Liability of board member or administrator for action taken in bad faith

Neither the plan nor any participating employer may have any liability to any participant for losses arising out of any decrease in the value of any investments held by the plan. The liability of the plan to any participant is limited to the value of the participant's account on the date the account is made available to the participant pursuant to the provisions of the plan. In no event may any member of the board, the administrator or any member of the administrator's staff have any liability for any action taken with respect to the plan unless such action be taken in bad faith.

Source: SL 1987, ch 38, § 4.

Library References

C.J.S. States § 114.

States ⌘64.1(4).

Westlaw Key Number Search:
360k64.1(4).

3-13-53. State deferred compensation fund—Deposit of deferred compensation—Payment of expenditures from fund—Administrative expenses

The South Dakota deferred compensation fund is hereby established. All compensation deferred pursuant to this chapter shall be deposited in such fund. Expenditures from the fund shall be paid on warrants drawn by the state auditor on vouchers approved by the administrator. All administrative expenses shall be budgeted and expended pursuant to chapters 4-7, 4-8, 4-8A, and 4-8B. All money in the fund and all property and rights held by the fund, at all times until made available to a participant or the participant's beneficiary, shall be held in trust for the exclusive benefit of the participant.

Source: SL 1987, ch 38, § 5; SL 1997, ch 32, § 1.

Library References

C.J.S. States § 114.

States ⚡64.1(4).

Westlaw Key Number Search:
360k64.1(4).

3-13-54. Adoption of rules—Limitation on availability of accumulated deferred compensation to participant—Exception

The board may adopt rules pursuant to chapter 1-26 concerning governing the time and amount of compensation which may be deferred, the persons who may participate in the plan, the conditions of participation, the time and manner in which accumulated deferrals may be made available to a participant or beneficiary, the establishment of administrative changes and participation by political subdivisions. In no event may the accumulated deferred compensation become available to the participant prior to thirty days following the participant's separation from employment with a participating employer unless such participant is faced with an unforeseeable emergency as determined by the board. If a participant returns to service with a participating employer within thirty days following separation from service, the accumulated deferred compensation is not available to him.

Source: SL 1987, ch 38, § 6.

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Administrative Code References

State retirement system, deferred compensation plan, see S.D. Admin. R. 62:03:01:01 et seq.

Westlaw	Key	Number	Search:
	360k64.1(3).		
C.J.S. States	§§ 113 to 116,	118.	

Library References

States  64.1(3).

3–13–55. Definition of terms

The definitions contained in § 3–12–47 apply to this chapter unless the context clearly otherwise requires. In addition the following terms mean:

- (1) “Plan,” the South Dakota deferred compensation plan created pursuant to this chapter; and
- (2) “Accumulated deferred compensation,” compensation deferred by a participant in the plan, plus any investment return thereon.

Source: SL 1987, ch 38, § 7.

CHAPTER 3-13A

SOUTH DAKOTA SPECIAL PAY RETIREMENT PROGRAM

Section

- 3-13A-1. Special pay retirement program established.
- 3-13A-2. Definitions.
- 3-13A-3. Special pay fund established.
- 3-13A-4. Board controls program as fiduciary—Promulgation of rules.
- 3-13A-5. Transfer of special pay to fund upon termination of employment—Contribution limit.
- 3-13A-6. Time for transfer of compensation to trust.
- 3-13A-7. Participant account.
- 3-13A-8. Vesting of participant account—Forfeiture.
- 3-13A-9. Investment of funds.
- 3-13A-10. Lump-sum distribution to participant.
- 3-13A-11. Investment alternatives—Transfer of account balances by participants.
- 3-13A-12. Transfer of funds from terminated investment selection.
- 3-13A-13. Allocation of investment return among participant accounts—Accounting dates.
- 3-13A-14. Valuation of investment alternatives.
- 3-13A-15. Beneficiaries of participant's account.
- 3-13A-16. Payments and benefits under program not assignable or subject to creditors' actions.
- 3-13A-17. Powers and duties of administrator.
- 3-13A-18. Election by participating units of retirement system to participate in program—Rescission of participation.
- 3-13A-19. Trustee-to-trustee transfer of participant's account to government defined-benefit retirement plan.
- 3-13A-20. Rollover transfer of participant's account.
- 3-13A-21. Rollover transfer of participant's account in another plan.
- 3-13A-22. Distribution from participant's account—Forms of distribution—Time for election.
- 3-13A-23. Date for commencement of annuity distributions—Interest—Distribution after participant's death.
- 3-13A-24. State investment officer to act as fiduciary—Certain persons prohibited from acting as third-party administrator or vendor.
- 3-13A-25. Limitation of liability to participants.

Administrative Code References

South Dakota Retirement System,
special pay retirement program, see
S.D. Admin. R. 62:04:01:01 et seq.

3-13A-1. Special pay retirement program established

There is hereby established the South Dakota special pay retirement program. It is the intent of the Legislature that the

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special pay retirement program shall become a qualified plan under § 401(a) of the code and that the program shall be treated as a governmental plan under § 414(d) of the code. It is the further intent of the Legislature that special pay transmitted to the fund is picked up by the participating unit and thus shall be designated as an employer contribution under § 414(h)(2) of the code.

Source: SL 2004, ch 43, § 1; SDCL § 3-12-165; SL 2005, ch 28, § 1.

3-13A-2. Definitions

The definitions contained in § 3-12-47 apply to §§ 3-13A-1 to 3-13A-25, inclusive. In addition, the following terms mean:

- (1) "Account," the record for each participant reflecting the amount of the participant's special pay transmitted to the fund, allocated investment gains and losses thereon, and administrative charges against those amounts;
- (2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;
- (3) "Administrator," the administrator of the South Dakota Retirement System as provided in § 3-12-55;
- (4) "Board," the South Dakota Retirement System Board of Trustees as established under § 3-12-48;
- (5) "Code," the Internal Revenue Code of 1986, as amended through January 1, 2004;
- (6) "Fund," the South Dakota special pay fund established pursuant to § 3-13A-3;
- (7) "Normal retirement date," the date a participant may retire pursuant to the provisions of chapter 3-12 without reduced benefits;
- (8) "Participant," a terminated employee of a participating unit who has reached the calendar month prior to the month of the member's fifty-fifth birthday and who received six hundred dollars or more in special pay;
- (9) "Participating unit," the State of South Dakota, the South Dakota Board of Regents, or any other political subdivision of the state that participates in the program;

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- (10) "Program," the South Dakota Special Pay Retirement Program created pursuant to §§ 3-13A-1 to 3-13A-25, inclusive;
- (11) "Special pay," compensation other than regular salary or wages granted a member of the system and transferred in a lump-sum to the fund at the termination of the member's employment;
- (12) "Third-party administrator," a person who, pursuant to contract, handles administration of the program on behalf of the board and the administrator; and
- (13) "Vendor," a person or organization selected by the state investment officer to provide investment or insurance products to the program.

Source: SL 2004, ch 43, § 2; SDCL § 3-12-166; SL 2005, ch 28, § 1; SL 2006, ch 22, § 1.

3-13A-3. Special pay fund established

The South Dakota special pay fund is hereby established. All compensation transmitted to the fund pursuant to §§ 3-13A-1 to 3-13A-25, inclusive, shall be deposited in the fund. Expenditures from the fund shall be paid on warrants drawn by the state auditor and supported by vouchers approved by the administrator. All administrative expenses shall be budgeted and expended pursuant to chapters 4-7, 4-8, 4-8A, and 4-8B. All money in the fund and all property and rights held by the fund shall be held in trust for the exclusive benefit of the participants at all times until made available to a participant or the participant's beneficiary. All benefits payable under this program shall be paid and provided for solely from the fund and a participating unit assumes no liability or responsibility therefor. Any trust under the program shall be established pursuant to a written agreement that constitutes a valid trust under the law of South Dakota.

Source: SL 2004, ch 43, § 3; SDCL § 3-12-167; SL 2005, ch 28, § 1.

3-13A-4. Board controls program as fiduciary—Promulgation of rules

The program shall be under the authority of the board. The board shall be held to the standard of conduct of a fiduciary

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and shall carry out its functions solely in the interest of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The board may promulgate rules necessary to establish uniform procedures for the administration of the program and to insure uniformity of application of the provisions of §§ 3-13A-1 to 3-13A-25, inclusive. Rules may be promulgated in regard to membership, contributions and the collection thereof, fees for administration of the program, and procedures for application for benefits and payment of benefits. The rules shall be promulgated pursuant to chapter 1-26 and shall be in accordance with the provisions of §§ 3-13A-1 to 3-13A-25, inclusive.

Source: SL 2004, ch 43, § 4; SDCL § 3-12-168; SL 2005, ch 28, § 1.

Administrative Code References

South Dakota Retirement System,
special pay retirement program, see
S.D. Admin. R. 62:04:01:01 et seq.

3-13A-5. Transfer of special pay to fund upon termination of employment—Contribution limit

Upon a participant's termination of employment, the participating unit shall transmit the gross amount of the participant's special pay to the fund. However, except to the extent permitted under § 414(v) of the code, if applicable, a contribution allocated to a member's account under the program may not exceed forty-one thousand dollars, as adjusted for increases in the cost-of-living pursuant to § 415(d) of the code, or one hundred percent of the participant's compensation, as identified in § 415(c)((3) of the code and § 1.415-2(d)(1) of the Code of Federal Regulations in effect on January 1, 2005, for the calendar year. For the purposes of the limitations under this section, all of the defined contribution plans of a participant's employer, whether terminated or current, shall be treated as a single defined contribution plan.

Source: SL 2004, ch 43, § 5; SL 2005, ch 27, § 2; SDCL § 3-12-169; SL 2005, ch 28, § 1.

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Administrative Code References regard to compensation, see S.D. Admin. R. 62:04:01:03.
State retirement system, special pay
retirement program, qualifications in

3-13A-6. Time for transfer of compensation to trust

All amounts of compensation subject to §§ 3-13A-1 to 3-13A-25, inclusive, shall be transferred to the trust within a period that is not longer than is reasonable for the proper administration of the accounts of participants.

Source: SL 2004, ch 43, § 6; SDCL § 3-12-170; SL 2005, ch 28, § 1.

3-13A-7. Participant account

An account shall be established for each participant. The account shall be the basis for any distribution to the participant or to the participant's beneficiary, surviving spouse, surviving children, or estate pursuant to § 3-13A-15.

Source: SL 2004, ch 43, § 7; SDCL § 3-12-171; SL 2005, ch 28, § 1.

3-13A-8. Vesting of participant account—Forfeiture

A participant's account is fully vested in the program at any time on or after the date the participant begins participation in the program. A participant's account is not subject to any forfeiture pursuant to the provisions of the program. A loss as described in § 3-13A-25 is not considered to be a forfeiture.

Source: SL 2005, ch 27, § 1.

3-13A-9. Investment of funds

Moneys held by the fund may be invested by program participants in such investments as are deemed appropriate by the state investment officer. The state investment officer may enter into contracts for investment alternatives and to offer internal investment alternatives. The program administrator or third-party administrator may transfer funds to, from, and among the respective investment alternatives.

Source: SL 2004, ch 43, § 8; SDCL § 3-12-172; SL 2005, ch 28, § 1.

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3-13A-10. Lump-sum distribution to participant

A participant who elects an immediate total lump-sum distribution from the program shall be guaranteed payment of the entire amount of the participant's special pay, plus any earnings, and less any mandatory income tax withholding and fees established by the board, within a period that is not longer than is reasonable from the date the participant's funds were received by the program on behalf of the participant.

Source: SL 2004, ch 43, § 9; SDCL § 3-12-173; SL 2005, ch 28, § 1.

3-13A-11. Investment alternatives—Transfer of account balances by participants

Each participant may elect to have the participant's funds invested in one or more of the investment alternatives selected by the state investment officer pursuant to § 3-13A-9. Subject to any limitations imposed by the administrator, a vendor, or a third-party administrator, a participant may elect to transfer any portion of the account balance from one offered investment alternative to another at any time, if notice is given to the administrator or the third-party administrator. Any costs associated with such a transfer shall be borne by the participant and shall be deducted from the participant's account. If, due to a payroll error, a participant's deferral is deposited in an investment alternative other than the one selected by the participant, the administrator or third-party administrator may correct the error by transferring the participant's deferral to the proper investment alternative, subject to any limitations which may be imposed by the vendor. No retroactive adjustment may be made.

Source: SL 2004, ch 43, § 10; SDCL § 3-12-174; SL 2005, ch 28, § 1.

3-13A-12. Transfer of funds from terminated investment selection

If a contract between the state investment officer and a vendor is terminated and a participant fails to notify the administrator or third-party administrator of the participant's new investment selection before the contract terminates, the administrator or third-party administrator shall transfer that partici-

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pant's account to the investment alternative designated by the state investment officer.

Source: SL 2004, ch 43, § 11; SDCL § 3-12-175; SL 2005, ch 28, § 1.

3-13A-13. Allocation of investment return among participant accounts—Accounting dates

The total investment return on any offered investment shall be allocated to the account of each participant based on the proportion the participant's account bears to all other accounts which have been invested in the same investment alternative. Allocations shall be made on each accounting date. The last day of each calendar quarter is an accounting date. The board may provide additional accounting dates.

Source: SL 2004, ch 43, § 12; SDCL § 3-12-176; SL 2005, ch 28, § 1.

3-13A-14. Valuation of investment alternatives

Each offered investment alternative shall be valued on each accounting date. The valuation shall be at market value. Any charges against the value shall be explicitly disclosed. Each participant shall be provided with a statement of the participant's account by no later than forty-five days after the close of each calendar quarter.

Source: SL 2004, ch 43, § 13; SDCL § 3-12-177; SL 2005, ch 28, § 1.

3-13A-15. Beneficiaries of participant's account

A participant may designate a beneficiary to receive the participant's benefits under the program in case of the death of the participant. If no beneficiary is designated, the participant's benefits shall be paid as follows:

- (1) To the participant's surviving spouse;
- (2) If there is no surviving spouse, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If there is no surviving spouse and there are no surviving children, then to the participant's estate.

Source: SL 2004, ch 43, § 14; SDCL § 3-12-178; SL 2005, ch 28, § 1.

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3-13A-16. Payments and benefits under program not assignable or subject to creditors' actions

Notwithstanding the provisions of § 3-13A-15, no participant may assign or otherwise alienate any right to any payment or benefit under the program. The right of a participant to any payment or benefit is not subject to the rights of the participant's or any beneficiary's creditors, and is exempt from executions, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.

Source: SL 2004, ch 43, § 15; SDCL § 3-12-179; SL 2005, ch 28, § 1.

3-13A-17. Powers and duties of administrator

The administrator shall administer the program, shall have all powers necessary to accomplish that purpose, and shall determine all questions arising under or in connection with the program. The administrator may hire additional employees as may be required and shall set the remuneration of such employees. In addition, the administrator, with the approval of the board, may contract with vendors for third-party administration of various duties under the program as the administrator sees fit. The administrator shall execute any agreements as are necessary to carry out the provisions of §§ 3-13A-1 to 3-13A-25, inclusive, except such agreements as are executed by the state investment officer pursuant to § 3-13A-9.

Source: SL 2004, ch 43, § 16; SDCL § 3-12-180; SL 2005, ch 28, § 1.

3-13A-18. Election by participating units of retirement system to participate in program—Rescission of participation

Any public employer that is a participating unit of the system established under chapter 3-12 may become a participating unit under this chapter at any time on or after July 1, 2004. The decision to become a participating unit shall be made by the elected official, the appointed official, or the governing body in charge of the unit. The unit shall become a participating unit as soon as notice of the decision has been delivered in writing to the system. A participating unit at a later date may choose to rescind such status and may do so by delivering written notice of the decision to the system. However, if such a

rescission occurs, the rescission does not affect the status of any participant who was employed by that unit.

Source: SL 2004, ch 43, § 17; SDCL § 3-12-181; SL 2005, ch 28, § 1.

3-13A-19. Trustee-to-trustee transfer of participant's account to government defined-benefit retirement plan

For the purpose of acquiring credited service in a qualified governmental defined-benefit retirement plan as identified under § 401(a) and defined in § 414(d) of the code, a participant may transfer a portion or all of the participant's account in the program by trustee-to-trustee transfer to the government defined-benefit retirement plan.

Source: SL 2004, ch 43, § 18; SDCL § 3-12-182; SL 2005, ch 28, § 1.

3-13A-20. Rollover transfer of participant's account

A participant may transfer a portion or all of the participant's account by rollover to a plan which is eligible under § 401(a), 403(b), 408, or 457 of the code.

Source: SL 2004, ch 43, § 19; SDCL § 3-12-183; SL 2005, ch 28, § 1.

3-13A-21. Rollover transfer of participant's account in another plan

To the extent permitted by law, a participant may transfer a portion or all of the participant's account in another plan which is eligible under § 401(a), 403(b), 408, or 457 of the code into this program by rollover. The program shall account for such amounts separately.

Source: SL 2004, ch 43, § 20; SDCL § 3-12-184; SL 2005, ch 28, § 1.

3-13A-22. Distribution from participant's account—Forms of distribution—Time for election

A participant is entitled to receive a distribution from the participant's account upon written application to the administrator or third-party administrator. The participant may elect, on forms prescribed by the administrator or third-party administrator, the time at which distributions under the program are to commence by designating the month and year during which

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the first distribution is to be made. The participant may elect to receive the participant's distribution in any of the following forms:

- (1) A lump sum;
- (2) Equal monthly installments over a fixed period; or
- (3) Any other form offered by the administrator or a third-party administrator.

The application and election shall be made prior to the time any amounts become payable. A participant or a beneficiary who has chosen a payment form may change that payment option, if no payment has yet been made, and subject to any administrative restrictions and charges established by the board.

Source: SL 2004, ch 43, § 21; SDCL § 3-12-185; SL 2005, ch 28, §1.

3-13A-23. Date for commencement of annuity distributions— Interest—Distribution after participant's death

A participant who does not take a total lump-sum distribution, transfer funds by rollover pursuant to § 3-13A-20, or transfer funds by trustee-to-trustee transfer pursuant to § 3-13A-19 may begin annuity distributions by selecting a retirement date, as set out in § 3-13A-22. If a participant does not make a selection, the participant's normal retirement date is as defined in subdivision 3-13A-2(7). However, distributions of a participant's benefits shall begin no later than the later of April first of the calendar year following the calendar year in which the participant reaches seventy and one-half years of age, or April first of the calendar year following the calendar year of the participant's retirement.

If the distribution begins prior to the participant's death, the entire interest shall be distributed over a period not to exceed the life expectancy of the participant or the life expectancies of the participant and a designated beneficiary. Any amount not distributed during the participant's life shall be distributed after the participant's death at least as rapidly as under the distribution method being used on the date of the participant's death. If the distribution begins after the participant's death, the entire

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amount payable to the participant shall be paid during a period of no more than five years, unless the distribution commences within one year and the participant's spouse is the named beneficiary, then during the life expectancy of the surviving spouse. If the surviving spouse is the participant's sole designated beneficiary and the surviving spouse then dies before distributions are required to begin, the provisions of this section apply as if the surviving spouse were the participant.

Source: SL 2004, ch 43, § 22; SDCL § 3-12-186; SL 2005, ch 28, § 1.

3-13A-24. State investment officer to act as fiduciary—Certain persons prohibited from acting as third-party administrator or vendor

The state investment officer shall be held to the standard of conduct of a fiduciary and shall carry out all functions solely in the interests of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. No employee of a participating unit and no spouse or dependent of the employee may act as or represent a third-party administrator or a vendor in a matter concerning the program, except that the state investment officer and the state investment officer's employees may invest all or part of the fund pursuant to § 3-13A-9.

Source: SL 2004, ch 43, § 23; SDCL § 3-12-187; SL 2005, ch 28, § 1.

3-13A-25. Limitation of liability to participants

Neither the program nor any participating unit is liable to any participant for losses arising out of any decrease in the value of any investments held under the program. The liability of the program to any participant is limited to the value of the participant's account on the date the participant chooses to begin payment pursuant to the provisions of the program. In no event may any member of the board, the administrator, or any member of the administrator's staff have any liability for any action taken with respect to the program unless such action has been taken in bad faith.

Source: SL 2004, ch 43, § 24; SDCL § 3-12-188; SL 2005, ch 28, § 1.

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ADMINISTRATIVE RULES OF SOUTH DAKOTA

Title 62 South Dakota Retirement System

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CHAPTER 62:01:01 DEFINITIONS

Section	
62:01:01:01.	Definition of terms.
62:01:01:02.	Termination of marriage.
62:01:01:03.	Care of children.

62:01:01:01. Definition of terms

Terms defined in SDCL 3–12–47 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Disability advisory committee,” a committee composed of the secretary of the Department of Human Services

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or a designee, a lawyer, and a physician, the latter two members both appointed by the administrator;

(2) “Represented group,” a group entitled to elect one or more trustees pursuant to SDCL 3–12–48 and 3–12–49. The group to which a member belongs is determined from the records of the system;

(3) “Employment,” for purposes of § 62:01:04:11, includes engagement of services by an employer who is not a participating unit and self-employment;

(4) “Class B public safety member,” an individual who is a class B member other than a justice, judge, or magistrate judge.

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:01:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–47, 3–12–49, 3–12–98, 3–12–100.

62:01:01:02. Termination of marriage

For purposes of SDCL 3–12–104, termination of marriage shall occur upon the issuance by a court of a decree of divorce or annulment.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3–12–58, 3–12–104.

Law Implemented: SDCL 3–12–104.

62:01:01:03. Care of children

For purposes of SDCL 3–12–95, care of children is the responsibility for the maintenance, education, and supervision of one or more children.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–95.

CHAPTER 62:01:02

CONTRIBUTIONS

Section

- 62:01:02:01. Determination of class A or class B member.
- 62:01:02:02. Repealed.
- 62:01:02:03. Penitentiary employees.
- 62:01:02:04. Permanent full-time employee—Probationary period.
- 62:01:02:05. Purchase of permissive service credit.
- 62:01:02:06. Refund of active contributions made during period of disability—Granted credited service.
- 62:01:02:07. Leave of absence without pay during service purchase agreement—Exception for leave of absence for military service.
- 62:01:02:08. Active membership defined by period of contributions—Quarter of service based on contribution.

62:01:02:01. Determination of class A or class B member

A member is a class A member until proof is supplied to the administrator that a member is a class B member. The administrator shall change the records when a change of duties requires a change of class.

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:02:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3–12–54, 3–12–58.

Law Implemented: SDCL 3–12–71, 3–12–91, 3–12–92.

62:01:02:02. Redeposit of contributions. Repealed

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:02:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; repealed, 9 SDR 81, 9 SDR 124, effective July 1, 1983.

62:01:02:03. Penitentiary employees

The following employees of the South Dakota penitentiary are class B members:

- (1) Warden;
- (2) Deputy warden; and
- (3) Guards.

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All credited service earned by such employees prior to July 1, 1978, is service earned as class A members.

Each employee who was employed by the South Dakota penitentiary as a correctional shop supervisor prior to July 1, 1992, shall continue as a class B member while employed as a correctional shop supervisor.

All other employees of the state penitentiary are class A members.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 18 SDR 185, adopted May 10, 1992, effective July 1, 1992.

General Authority: SDCL 3-12-58, 3-12-47(56).

Law Implemented: SDCL 3-12-47(13), 3-12-47(56), 3-12-92.1.

62:01:02:04. Permanent full-time employee—Probationary period

An employee is a permanent full-time employee if the position held by that employee is classified as a permanent position and the person holding it is required to work 20 or more hours a week and at least 6 months a year. A probationary employee holding such a position is a permanent full-time employee.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-47(38), 3-12-71.

62:01:02:05. Purchase of permissive service credit

A member may purchase permissive service credit pursuant to SDCL 3-12-84.2 only for a period of time that coincides with a period of actual employment, and for which period of employment the member is not entitled to retirement benefits from another qualified plan.

Source: 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-84.2.

62:01:02:06. Refund of active contributions made during period of disability—Granted credited service

If a disabled member receiving credited service pursuant to SDCL 3–12–103 and § 62:01:04:05.01 becomes employed by a member employer unit, the member and employer shall make active contributions during the period of such employment pursuant to SDCL 3–12–71. Upon the member's conversion of disabled status to retired status, upon the member's termination of disabled status or upon the member's termination of employment, whichever occurs first, the member may request a refund of the member's accumulated contributions made during that period when the member also was receiving credited service due to the disability.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–71, 3–12–103.

62:01:02:07. Leave of absence without pay during service purchase agreement—Exception for leave of absence for military service

If a member is purchasing credited service pursuant to SDCL 3–12–83.2 and the member takes a leave of absence authorized by the member's employer for a period of less than one year, the member's irrevocable agreement shall continue upon the member's return to active employment as though the member had not taken a leave of absence. The completion date of the agreement shall be modified accordingly, but the payment amounts and all other terms of the agreement shall remain the same.

If a member is purchasing credited service pursuant to SDCL 3–12–83.2 and the member takes a leave of absence authorized by the member's employer for purposes other than military service for a period of one year or greater, the member's irrevocable agreement shall terminate and the member shall receive credited service in proportion to the amount the member paid toward the total agreement amount prior to the leave of absence.

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If a member is purchasing credited service pursuant to SDCL 3–12–83.2 and the member takes a leave of absence authorized by the member’s employer for purposes of military service for a period of time one year or greater, the member’s irrevocable agreement shall continue upon the member’s return to active employment as though the member had not taken leave of absence. The completion date of the agreement shall be modified accordingly, but the payment amounts and all other terms of the agreement shall remain the same.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–83.2.

62:01:02:08. Active membership defined by period of contributions—Quarter of service based on contribution

The beginning of a member’s period of active membership in the system is established by the date of the employer contribution report to the system that includes the member’s initial employee and employer contributions. A member’s active membership is terminated when the system receives notice of termination from an employer, accompanied by the member’s final employee and employer contributions. If the system receives any employee and matching employer contributions on behalf of a member during a calendar quarter, the member shall be credited with a full calendar quarter of contributory service toward determining the member’s retirement benefits.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–71, 3–12–72, 3–12–73.

CHAPTER 62:01:03**RETIREMENT ALLOWANCE****Section**

62:01:03:01. Repealed.

62:01:03:02. Determination of eligibility for retirement allowance.

62:01:03:03. Repealed.

RETIREMENT

62:01:03:01. Application for retirement. Repealed

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:03:01, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

62:01:03:02. Determination of eligibility for retirement allowance

Upon receipt of an application for a retirement allowance, the administrator shall determine whether or not the applicant is eligible for the allowance.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-56, 3-12-57, 3-12-90 to 3-12-92.

62:01:03:03. Members with both class A and class B service. Repealed

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 24 SDR 160, effective May 24, 1998.

CHAPTER 62:01:04

DISABILITY ALLOWANCE

Section

- | | |
|------------------------------|---|
| 62:01:04:01. | Repealed. |
| 62:01:04:02. | Disability—Beginning of benefits. |
| 62:01:04:03. | Disability determination—Disability advisory committee—Medical examination. |
| 62:01:04:04 and 62:01:04:05. | Repealed. |
| 62:01:04:05.01. | Termination of disability allowance—Credited service. |
| 62:01:04:05.02. | Credited service as employee while disabled. |
| 62:01:04:06. | Medical examination of member receiving disability allowance—Refusal. |
| 62:01:04:07. | Participating unit—Filing upon return to service. |
| 62:01:04:08. | Repealed. |
| 62:01:04:09. | Criteria for determining disability if contributory service ended prior to July 1, 1995—Position of comparable level. |
| 62:01:04:09.01. | Criteria for determining disability if contributory service ended after July 1, 1995—Certification by employer. |
| 62:01:04:10. | Member receiving a disability allowance if service ended prior to July 1, 1994. |
| 62:01:04:11. | Termination of a disability allowance upon return to work if service ended prior to July 1, 1994. |

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- 62:01:04:11.01. Termination of disability allowance upon return to work if service ended after July 1, 1994.
62:01:04:12. Repealed.
62:01:04:13. Income to be included in earned income.

62:01:04:01. Applications—Requirements. Repealed

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 18 SDR 185, effective May 10, 1992.

62:01:04:02. Disability—Beginning of benefits

A member whose application for a disability allowance is approved shall receive the allowance beginning on the first day of the month following the date on which the member's contributory service terminates.

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-98.

62:01:04:03. Disability determination—Disability advisory committee—Medical examination

Upon receipt of an application for a disability allowance, with supporting medical evidence, the administrator shall determine whether the applicant is eligible for a disability allowance. The administrator may request the advice of the disability advisory committee with respect to any application. The recommendation of the disability advisory committee is not binding on the administrator. The disability advisory committee or the administrator may require an independent medical examination of an applicant to be conducted by a licensed, disinterested physician selected by the disability advisory committee or the administrator to evaluate the applicant's condition. The disability advisory committee or the administrator may require a functional capacity assessment of the applicant to be conducted by a licensed professional qualified to administer such assess-

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ments, and the assessment may be used to evaluate the applicant's qualification for benefits.

If the administrator determines that the member is not disabled, a notice of the administrator's determination and the reasons for it shall be sent, certified mail, to the applicant's last known address.

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:03, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-57, 3-12-98, 3-12-100.

62:01:04:04. Appeal of decision. Repealed

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:04, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

62:01:04:05. Membership status during disability. Repealed

Source: 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:05, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

62:01:04:05.01. Termination of disability allowance—Credited service

If a member receiving a disability allowance ceases to be disabled, elects to convert to a retirement benefit, or is converted to a retirement benefit pursuant to SDCL 3-12-103, the disability allowance shall terminate. The member shall receive credited service for the period during which the member receives a disability allowance, but not beyond the member's normal retirement age.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-98, 3-12-103.

62:01:04:05.02. Credited service as employee while disabled

No member who is receiving a disability allowance and who simultaneously is making contributions to the system may re-

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ceive more than one year of credited service in any actual year. If the member was contributing for class B credited service immediately prior to approval of a disability allowance and then is contributing to the system for class A credited service while on disability, the member shall be credited with class B credited service through the member's class B normal retirement age and class A credited service for any period that contributions are made after class B normal retirement age.

Source: 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-98, 3-12-103.

62:01:04:06. Medical examination of member receiving disability allowance—Refusal

The administrator may require a member receiving a disability allowance to undergo a medical examination at any time at the expense of the system. If the member refuses to submit to a medical examination within 30 days of receipt of written notice from the administrator, the disability allowance shall be suspended until the member withdraws the refusal. If the refusal continues for one year, the member shall forfeit all rights to the disability allowance. Upon completion of the examination by a physician selected by the administrator, the physician shall provide to the administrator a complete report on the condition of the member. If the administrator finds that the member is no longer disabled, the administrator shall so notify the member by certified mail and the payment of the disability allowance shall terminate one year thereafter. Such a finding by the administrator is subject to appeal pursuant to § 62:01:06:01 and review by the Board of Trustees as a contested case.

Source: 2 SDR 17, effective September 9, 1975; transferred from § 47:07:04:06, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-57, 3-12-98, 3-12-100.

62:01:04:07. Participating unit—Filing upon return to service

A participating unit employing a member who is receiving a disability allowance shall file notice with the system designating the date the member returns to work.

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62:01:04:09

Source: 2 SDR 17, effective September 9, 1975; transferred from § 47:07:04:07, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-98, 3-12-100.

62:01:04:08. Report of income by a disabled member. Repealed

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 18 SDR 185, effective May 10, 1992; repealed, 24 SDR 160, effective May 24, 1998.

62:01:04:09. Criteria for determining disability if contributory service ended prior to July 1, 1995—Position of comparable level

An applicant whose contributory service ends prior to July 1, 1995, shall be granted a disability allowance only if the applicant establishes the following by a preponderance of evidence:

- (1) The applicant has a mental or physical impairment which has been diagnosed by a licensed physician;
- (2) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from continuing to perform usual duties for the applicant's employer;
- (3) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from performing the duties of a position of comparable level for which the applicant is qualified by education, training, and experience; and
- (4) At the time of termination of the applicant's employment, the disability was expected to last at least one year.

Evidence that the applicant could actually secure a position of comparable level or that such a position is actually available is not required to support a finding that an applicant is capable of performing the duties of such a position.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-47(26), 3-12-100, 3-12-141.

62:01:04:09.01. Criteria for determining disability if contributory service ended after July 1, 1995—Certification by employer

An applicant whose contributory service ends on or after July 1, 1995, shall be granted a disability allowance only if the applicant establishes subdivisions (1), (2), and (4), below, by a preponderance of evidence, and provides subdivision (3), below:

(1) The applicant has a mental or physical impairment which has been diagnosed by a licensed physician;

(2) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from continuing to perform usual duties for the applicant's employer;

(3) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from performing the usual duties of the applicant's position, the usual duties of the applicant's position with accommodations by the employer, or the usual duties of a position of comparable level with the applicant's employer, all as so certified by the employer; and

(4) At the time of termination of the applicant's employment, the disability was expected to last at least one year.

In providing certification pursuant to subdivision (3), above, an employer shall consider the applicant's education, experience, training, work history, impairment, location of residence, and compensation and benefits in relation to positions of possible comparable level.

Source: 24 SDR 160, effective May 24, 1998; 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-47(26), 3-12-98, 3-12-100, 3-12-141.

62:01:04:10. Member receiving a disability allowance if service ended prior to July 1, 1994

For purposes of this chapter, a member is considered to be receiving a disability allowance if the applicant's application for the allowance has been approved, whether SDCL 3-12-101 prevents the member from receiving any payment from the system. The provisions of this section apply only if the member's contributory service ended prior to July 1, 1994.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-101.

62:01:04:11. Termination of a disability allowance upon return to work if service ended prior to July 1, 1994

If a member receiving a disability allowance becomes employed full time, the disability allowance ends one year following the date the employment began if the following requirements are met:

- (1) At the end of the one-year period, the member is so employed;
- (2) The employment has been continuous during the one-year period; and
- (3) The employment is a position of comparable level.

The provisions of this section apply only if the member's contributory service ended prior to July 1, 1994.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-47(26), 3-12-98, 3-12-100.

62:01:04:11.01. Termination of disability allowance upon return to work if service ended after July 1, 1994

If a member receiving a disability allowance becomes employed full time, the disability allowance ends one year following the date the employment began if the following requirements are met:

62:01:04:11.01**ADMINISTRATIVE RULES**

(1) At the end of the one-year period, the member is so employed;

(2) The employment has been continuous during the one-year period; and

(3) The employment is the member's prior position, the member's prior position with accommodations, or a position of comparable level involving the usual duties of the member's position with the former employer.

The provisions of this section apply only if the member's contributory service ended after July 1, 1994.

Source: 24 SDR 160, effective May 24, 1998; 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58, 3-12-100.

Law Implemented: SDCL 3-12-47(26), 3-12-98, 3-12-100, 3-12-141.

62:01:04:12. Conversion of disability allowance to early retirement allowance. Repealed

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 18 SDR 185, effective May 10, 1992.

62:01:04:13. Income to be included in earned income

For purposes of including earned income in calculations under SDCL 3-12-143, a disabled member's earned income includes the member's wages, salaries, tips, or other compensation received by performing personal services for an employer, and includes the net earnings from self-employment in a business that the member owns. Earned income does not include payments from disability insurance coverage obtained by either the member or the member's employer.

Source: 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-143.

CHAPTER 62:01:05
ELECTION OF BOARD OF TRUSTEES

Section

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62:01:05:17.	Procedure when designated day falls on weekend or holiday.

62:01:05:01. Election of trustees

The board shall hold an election of trustees annually. The ballots for the election are due on the final business day in May. Each represented group that has a trustee whose term expires June 30 is entitled to elect a trustee. The board shall announce the results of the election each year at its first meeting following the ballot due date.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:01.01**ADMINISTRATIVE RULES****62:01:05:01.01. Terms of trustees**

The initial term of each trustee representing a represented group shall expire as follows:

- (1) State employees—one term on June 30, 1980, and one term on June 30, 1981;
- (2) Teachers—one term on June 30, 1978, and one term on June 30, 1981;
- (3) Municipal employees—June 30, 1979;
- (4) County employees—June 30, 1981;
- (5) Classified employees—June 30, 1978;
- (6) Law enforcement officers—June 30, 1978;
- (7) Justices, judges, and law-trained magistrates—June 30, 1979;
- (8) Boards of county commissioners—June 30, 1979;
- (9) School district boards—June 30, 1980;
- (10) Municipal officials—June 30, 1981;
- (11) Retirees—June 30, 1981; and
- (12) Board of regents faculty and administrative employees—June 30, 1980.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:01.02. Voting by employers

Each employer whose represented group is entitled to elect a trustee is entitled to one vote.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:01.03. Official election listing—Voting by members

The board shall compile an official election listing of active, inactive vested, and retired members of the system by classification of employment as of April 13 or the last working day preceding April 13 each year. The official election listing may be modified after April 13 only if a member has been erroneously misclassified. Each member on record is entitled to one vote in that year's election for a candidate running in the member's classification of employment. A member who belongs to more than one classification of employment may vote only for the candidate in the classification for which the member is listed on the official election listing.

Source: 20 SDR 109, effective January 19, 1994; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:01.04. Candidate restricted by official election listing

A candidate seeking election to the board to serve on behalf of a represented group shall be a current member of that group. If the candidate is seeking to serve on behalf of an employee represented group, the candidate's current status within the group must be confirmed under the official election listing compiled pursuant to § 62:01:05:01.03.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:01.05. Candidate from two represented groups

A candidate seeking election to the board who simultaneously is both retired and a member of another employee represented group shall be deemed a retiree for purposes of §§ 62:01:05:01.03 and 62:01:05:01.04.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:02. Mailing notice of election and nominating petition

A notice of election shall be mailed no later than January 15 to at least one authorized agent of any employer having employees entitled to vote in the election and to all retirees entitled to vote in the election. Nominating petitions shall be mailed to all such authorized agents no later than January 15.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 15 SDR 139, effective March 22, 1989; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:03. Procedure for nomination—Filing of member petition

A justice, judge, or magistrate judge who is a candidate for nomination for trustee shall file one or more petitions containing, in all, at least five valid signatures of members of the candidate's represented member group. Each other member candidate for nomination for trustee shall file one or more petitions containing, in all, at least 20 valid signatures of members of the candidate's represented group. In addition to the required signatures, each petition shall contain the name, address, and last four digits of the social security number of the member candidate and a declaration of candidacy signed by the candidate. Each nominating petition must be in the possession of the office of the administrator no later than 5:00 p.m. on February 23.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:03, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 24 SDR 160, effective May 24, 1998; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

62:01:05:03.01. Procedure for nomination—Filing of employer petition

Each employer candidate for nomination for trustee shall file one or more petitions containing, in all, at least 20 valid

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signatures of members of the candidate's represented group. In addition to the required signatures, each petition shall contain the name, address, and represented employer group of the candidate and a declaration of candidacy signed by the candidate. Each nominating petition must be in the possession of the office of the administrator no later than 5:00 p.m. on February 23.

Source: 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:04. Filing for petition. Repealed

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:04, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

62:01:05:05. Validity of nominating petition

The board of trustees or a committee of the board shall determine the validity of each nominating petition.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 7:07:05:05, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:05.01. Special election news letter—Circulation—Candidate biographies

Each year the system's staff shall prepare a special election edition of the newsletter. The special edition shall be provided to each employer unit or each member of a represented group whose representative position on the board is subject to election that year, even if there is only a single candidate for election to the position. Each candidate, even if unopposed and even if the candidate is an incumbent, shall provide to the system a recent photograph and a biography for inclusion in the special edition. The biography shall contain 200 words or less. The biography shall include general background information and may include the candidate's position on any particular system issue if the candidate so chooses. However, a biography may not make reference to another candidate, either by name

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or indirectly, and may not make reference to another candidate's or trustee's position on any system issue. The board or any person designated by the board shall review each biography. If, upon review, a biography is determined to be out of compliance with the provisions of this section, the board or person reviewing the biography shall communicate with the candidate to prepare a biography that is in compliance with this section. If a candidate refuses to provide a biography that is in compliance, no biography may be printed.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:06. Preparation of ballots

The administrator shall prepare separate ballots for each represented group entitled to vote in the election. Each ballot shall contain the appropriate designation of the represented group and the names, in alphabetical order, and the addresses of the candidates. No ballot shall be prepared if there are less than two candidates who have filed valid nominating petitions to represent a represented group.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:06, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:07. Mailing of ballots

The administrator shall mail no later than April 30 the applicable ballot to each member entitled to vote in the election and to each employer entitled to vote in the election.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:07, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:08. Validity of member ballot

To be valid, a member ballot must be in the possession of the office of the administrator no later than 5:00 p.m. on the final business day in May. The ballot may be returned enclosed in an envelope.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:08, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:09. Validity of employer ballot

To be valid, an employer ballot must be signed by the presiding officer of the governing board or commission of the employer and in the possession of the office of the administrator no later than 5:00 p.m. on the final business day in May. The ballot may be returned enclosed in an envelope.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:09, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:09.01. No write-in candidates

The board may not recognize write-in candidates.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

General Authority: 3-12-58.

Law Implemented: 3-12-49.

62:01:05:10. Issuance of new ballot

The administrator may issue a second ballot to a voter only with approval of the internal auditing manager, who has sole control over all replacement ballots. The internal auditing manager may approve the issuance of a replacement ballot only upon receipt of an affidavit from the member or employer eligible to vote that certifies that an original ballot was not

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received or the original ballot was lost or misplaced and not previously returned to the system.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:10, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:11. Receipt of ballot. Repealed

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:11, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; repealed, 31 SDR 191, effective May 22, 2005.

62:01:05:12. Counting of ballots—Void ballots

Within the first three business days in June, the board or canvassers appointed by the chair shall count the official ballots. For each vacancy to be filled, the candidate receiving the highest number of votes is elected.

Any ballot from which it is impossible to determine the member's choice is void and may not be counted. However, if the member's mark on a ballot is sufficiently plain to determine the member's intention, the board or committee of the board shall count the vote. This section shall be construed liberally by the board or committee to assure that each member's vote is counted. The board or committee shall place any void ballot in a void ballot file.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:12, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:13. Results of election

The board shall confirm its count or the canvassers' report and shall certify the results of the election at the first board meeting after ballot counting pursuant to § 62:01:05:12 is com-

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Repealed

pleted. However, the administrator shall notify all the candidates and the members of the board of the tentative election results within three business days after the ballot counting is completed. If no election is required, the board shall declare the nominee elected.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:13, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:14. Contest of election

An election is considered valid unless a notice of contest is filed with the administrator within 15 days after the election results are announced. If such a notice is filed, the board shall hold a hearing pursuant to SDCL chapter 1-26 to determine the validity of the election.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:14, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:15. Storage of ballots

The administrator shall keep all ballots cast in a safe place in the office of the administrator before the ballots are counted. The administrator shall hold the counted ballots in the office of the administrator for at least 45 days after the election results are announced or until a contest is finally decided.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:15, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-49.

62:01:05:16. Filling of vacancies. Repealed

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:16, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; repealed, 9 SDR 81, 9 SDR 124, effective July 1, 1983 .

62:01:05:17**ADMINISTRATIVE RULES****62:01:05:17. Procedure when designated day falls on weekend or holiday**

Except as otherwise specified, if the date designated for any action under this chapter falls on a Saturday, Sunday, or legal holiday, the action may be taken on the next business day.

Source: 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–49.

CHAPTER 62:01:06**APPEALS****Section**

62:01:06:01. Right of appeal—Notice.

62:01:06:02. Repealed.

62:01:06:03. Declaratory rulings.

62:01:06:04. Use of digital Dakota network for administrative appeals authorized.

62:01:06:01. Right of appeal—Notice

A person aggrieved by a decision of the administrator may appeal that decision to the board, provided that the person gives written notice of intention to appeal within 60 days after receipt of the notice of decision. The notice shall identify the person appealing and the decision to be appealed.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–57.

62:01:06:02. Independent medical evaluation. Repealed

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 24 SDR 160, effective May 24, 1998.

62:01:06:03. Declaratory rulings

A petition for a declaratory ruling under SDCL 1–26–15 shall be heard in accordance with the procedures in SDCL 1–26. The petition must be filed within 60 days of the event giving rise to

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the contested case. The administrator may elect to contract for the services of an independent hearing examiner to hear the arguments of interested parties and to issue a recommendation to the Board of Trustees in order to assist the board in issuing the declaratory ruling.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 1-26-15, 3-12-58.

Law Implemented: SDCL 1-26-15, 1-26D-11.

62:01:06:04. Use of digital Dakota network for administrative appeals authorized.

Any administrative appeal conducted pursuant to this chapter may utilize the digital Dakota network for any proceedings held as part of any such appeal.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-57.

CHAPTER 62:01:07

ADMINISTRATION

Section

- 62:01:07:01. Secretary to board—Filing.
- 62:01:07:02. Inspection and correction of files.
- 62:01:07:03. Waiver of privilege.
- 62:01:07:04. Authorized agents.
- 62:01:07:05. Procedure for filling a vacancy on the board.
- 62:01:07:06. Beneficiary designated by qualified domestic relations order.
- 62:01:07:07. Prospective nature of qualified domestic relations orders.
- 62:01:07:08. Right of review—Notice.
- 62:01:07:09. Lump-sum payments subsequent to annuity payments.
- 62:01:07:10. Rollover of beneficiary payment by surviving spouse or other beneficiary.
- 62:01:07:11. Elected official's period of participation—Notice of nonparticipation or participation—Presumption—Appointed official.

62:01:07:01. Secretary to board—Filing

The administrator shall act as secretary to the board. Any document required to be filed with the board shall be filed with the administrator.

62:01:07:01**ADMINISTRATIVE RULES**

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-57.

62:01:07:02. Inspection and correction of files

A member of the system, upon request, may inspect, during regular business hours, any file directly relating to the member. The member may request correction of any alleged errors in the file.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-73.

62:01:07:03. Waiver of privilege

A request by a member for a hearing before the board shall be, for the purpose of the hearing, a waiver by the member of any privilege against disclosure of information contained in the files of the system relevant to the subject matter of the hearing.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-57.

62:01:07:04. Authorized agents

Each participating unit may appoint persons to serve as authorized agents. Each person so appointed shall be an employee of the participating unit. An authorized agent shall be the agent of the participating unit and shall provide liaison between the participating unit and the system.

Source: 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-72, 3-12-73.

62:01:07:05. Procedure for filling a vacancy on the board

The administrator shall be notified of a vacancy on the board by the vacating board member, by the member's participating unit's governing body, by the member's employer, or by any

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other board member. Upon the administrator's receipt of notice, the procedure to fill the vacancy shall be as follows:

(1) The administrator shall notify all members of the board of the vacancy;

(2) If circumstances permit, the administrator shall ask the incumbent to recommend a replacement to serve in the incumbent's stead;

(3) If the vacancy is for a trustee to serve on behalf of an employer represented group, the administrator shall notify the governing body of each participating unit affected by the vacancy of the vacancy and request the governing body's input in seeking a qualified candidate. The administrator shall solicit résumés of qualified individuals from governing bodies and interested individuals. The résumés shall be submitted to the administrator. If a state-wide association exists that is made up of members of the employer represented group, the administrator shall notify the association of the vacancy and request the association's input in seeking a qualified candidate. If the vacancy is for a trustee to serve on behalf of an employee represented group, the administrator shall notify all authorized agents for the group affected by the vacancy of the vacancy and request that all employees affected by the vacancy be advised of the vacancy. Any interested member of the represented group may submit his or her résumé to the administrator. If a state-wide association exists that is made up of members of the employee represented group, the administrator shall notify the association of the vacancy and request the association's input in seeking a qualified candidate;

(4) The administrator shall provide to each board member a copy of each résumé received;

(5) At its next regularly-scheduled meeting, the board, by secret ballot, shall select a replacement trustee from among those individuals who submitted résumés; and

(6) The replacement trustee shall fill the vacancy on the board immediately and shall serve until the regular term of the vacancy has been completed and the position is filled for

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a new term through a normal election pursuant to SDCL 3–12–49 and chapter 62:01:05.

The provisions of this section notwithstanding, no vacant position may be filled unless the vacancy occurs at least eight months prior to when a normal election for a regular term will be completed to fill that trustee position pursuant to SDCL 3–12–49 and chapter 62:01:05.

Source: 31 SDR 191, effective May 22, 2005; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–53.

62:01:07:06. Beneficiary designated by qualified domestic relations order

If a qualified domestic relations order provides that a member's former spouse shall be treated as a beneficiary for any payment pursuant to SDCL 3–12–110, the provision shall supercede any contrary beneficiary designation by the member. In any such instance, the provision of the qualified domestic relations order and the member's beneficiary designation shall be administered in a manner to give full effect to the order and both proportional and equitable effect to the member's designation of any beneficiary by the member.

Source: 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–110, 3–12–115.

62:01:07:07. Prospective nature of qualified domestic relations orders

The provisions of a qualified domestic relations order shall be prospective from the date of the order. Any division of benefits paid prior to the date of the order, service of the order upon the system, or qualification of the order by the system, whichever is later, shall be the responsibility of the parties to the order. However, the administrator may agree to adjust future payments to remedy an error in prior payments if the error in prior payments involved the system.

Source: 32 SDR 203, effective June 5, 2006.

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62:01:07:10

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-115.

62:01:07:08. Right of review—Notice

A person aggrieved by any determination made by the system's staff may request a review of that determination by the administrator, if the person provides the request for review in writing within 30 days after receipt of the staff's determination. The request for review shall identify the person making the request and the determination to be reviewed.

Source: 32 SDR 203, effective June 5, 2006.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-56, 3-12-57.

62:01:07:09. Lump-sum payments subsequent to annuity payments

No member may withdraw accumulated contributions pursuant to SDCL 3-12-76 or 3-12-76.1 if more than one annuity payment has been made to the member pursuant to SDCL 3-12-75, 3-12-91, 3-12-92, 3-12-92.4, 3-12-99, or 3-12-103.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-76, 3-12-76.1.

62:01:07:10. Rollover of beneficiary payment by surviving spouse or other beneficiary

A participant's surviving spouse may transfer a portion of all of the participant's account by rollover to another plan which is eligible under §§ 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986, as amended and in effect on January 1, 2007. A participant's beneficiary who is not the participant's surviving spouse may transfer a portion or all of the participant's account by rollover to a plan which is eligible under § 408 of the Internal Revenue Code of 1986, as amended and in effect on January 1, 2007.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-76.3, 3-12-110, 3-12-116.

62:01:07:11. Elected official's period of participation—Notice of nonparticipation or participation—Presumption—Appointed official

If an elected official chooses to participate in the system pursuant to SDCL 3–12–64, the official shall continue participation until the completion of the official's term of office. If the official is reelected, for a period of 90 days after the reelection the official again has a choice whether to continue participation in the system. If the official chooses to discontinue active membership in the system, the official shall so notify the system by filing a system termination form within the 90-day period. If an official so files a termination form, any employee and employer contributions made during the 90-day period on behalf of the official shall be returned to the employer as contributions in error. An official may continue active membership by filing a new system enrollment form. Failure to file either form within the 90-day period shall be deemed to be an election by the official to continue active participation in the system. An individual appointed to fill a position that normally is elected shall be treated in the same manner as an elected official by the system.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–64.

CHAPTER 62:01:08**BENEFIT LIMITS****Section**

62:01:08:01. Maximum annual benefit.

62:01:08:02. Repealed.

62:01:08:03. Applicability of limits.

62:01:08:04. Repealed.

62:01:08:01. Maximum annual benefit

Annual benefits payable to a member may not exceed \$160,000, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code, as in effect on January 1, 2002.

RETIREMENT

62:01:08:03

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-12-89.1.

Law Implemented: SDCL 3-12-89.1.

62:01:08:02. Earnings inclusions and exclusions. Repealed

Source: 14 SDR 57, effective October 18, 1987; repealed, 24 SDR 160, effective May 24, 1998.

62:01:08:03. Applicability of limits

If a member has been credited with less than 10 years of credited service, the maximum annual retirement allowance must be reduced by multiplying the maximum annual pension by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is 10.

The limits in § 62:01:08:01 apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between ages 62 and 65. The limits, however, do not apply to any portion of a benefit resulting from required member contributions made on an after-tax basis. If payment begins before age 62, the limits must be reduced so that they are actuarially equivalent to such a benefit beginning at age 62. For police or fire fighters who are members of the system, the limit may not be reduced for retirement before age 62, regardless of retirement age, provided that the member has completed at least 15 years of credited service. If payment begins after age 65, the limit is the actuarial equivalent of a \$160,000 annual benefit, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code, as in effect on January 1, 2002, commencing at age 65. The interest assumption for purposes of determining actuarial equivalency under this section is the interest rate otherwise used for purposes of computing optional forms of income payable under the system, but the rate may not be less than 5 percent annually if benefits begin before age 62 and may not exceed 5 percent annually if benefits begin after age 65.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-12-89.1.

Law Implemented: SDCL 3-12-89.1.

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62:01:08:04. Annual benefit under combination of plans. Repealed

Source: 14 SDR 57, effective October 18, 1987; repealed, 24 SDR 160, effective May 24, 1998.

ARTICLE 62:03

DEFERRED COMPENSATION PLAN

Chapter

- 62:03:01. Definitions.
- 62:03:02. Participation in plan.
- 62:03:03. Amounts of deferrals.
- 62:03:04. Participants' accounts and investments.
- 62:03:05. Distributions.
- 62:03:06. Administration.

CHAPTER 62:03:01

DEFINITIONS

Section

- 62:03:01:01. Definitions.

62:03:01:01. Definitions

In addition to the terms defined in SDCL 3–13–55, terms used in this article mean:

- (1) “Account,” the record for each participant reflecting the amount of the participant’s deferrals, allocated investment gains and losses, and administrative charges against those amounts;
- (2) “Accounting date,” the date on which an investment is valued and the total investment return is allocated to a participant’s account;
- (3) “Administrator,” the administrator of the South Dakota retirement system as provided in SDCL 3–12–55;
- (4) “Board,” the board of trustees of the South Dakota retirement system as provided in SDCL 3–12–48;
- (5) “Compensation,” total cash remuneration paid to an employee by a participating employer for personal services rendered to the participating employer;

(6) “Deferred compensation” or “deferrals,” the portion of a participant’s compensation deferred pursuant to this plan;

(6A) “Dependent,” a participant’s qualifying child or a participant’s qualifying relative, each as defined in § 152 of the Internal Revenue Code of 1986, as amended and in effect on January 1, 2007;

(7) “Employee,” a person providing services to the state or a political subdivision of the state for which compensation is paid by a participating employer, including employees of any agency, board, or commission of the state and its political subdivisions; members of the Legislature; members of any board or commission of the state and any of its political subdivisions; and persons furnishing services to the state or any political subdivision pursuant to a contract as independent contractors;

(8) “Participating employer,” the state of South Dakota, any of its agencies, boards, and commissions, and any political subdivision as identified in § 62:03:02:01;

(9) “Participant,” an employee of a participating employer who elects to participate in the plan;

(10) “Participation agreement,” the written agreement between employer and employee under which compensation is deferred pursuant to this plan;

(11) “Code,” the Internal Revenue Code of 1986, as amended and in effect on January 1, 2007;

(12) “Severance from employment,” the complete severance of a participant’s employment relationship with a participating employer as set out in § 457(d)(1)(A)(ii) of the code;

(13) “Normal retirement date,” the date a participant retires pursuant to a participating employer’s retirement plan without reduced benefits;

(14) “Includible compensation,” the compensation remaining after subtracting any deferrals under the plan;

(15) “Vendor,” a person or organization selected by the state investment officer to provide investment or insurance products to the plan;

(16) “Unforeseeable emergency,” severe financial hardship to a participant resulting from an illness or accident of the participant or of a dependent of the participant, funeral expenses of a dependent, severe loss of income that is completely beyond the control of the participant, loss of the participant’s property due to casualty, imminent foreclosure or eviction from a participant’s primary residence, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant; and

(17) “Third-party administrator,” a person who, pursuant to contract, handles administration of the plan on behalf of the board and the administrator.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–49.

CHAPTER 62:03:02

PARTICIPATION IN PLAN

Section

- 62:03:02:01. Participation by political subdivisions.
- 62:03:02:02. Participation by employees.
- 62:03:02:03. Enrollment of participants.
- 62:03:02:04. Participation agreement.
- 62:03:02:05. Modification of enrollment.
- 62:03:02:06. Revocation of enrollment.
- 62:03:02:07. Designation of beneficiary—Distribution of benefits.
- 62:03:02:08. Deferred compensation plans only as supplemental retirement plans.

62:03:02:01. Participation by political subdivisions

Any political subdivision which participates in the South Dakota retirement system provided in SDCL 3–12 or which participates in a previously established retirement plan pursuant to SDCL 3–12–65 is a participating employer in the plan.

62:03:02:01

ADMINISTRATIVE RULES

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-49.

62:03:02:02. Participation by employees

Any employee receiving compensation from a participating employer may elect to participate in the plan.

Source: 14 SDR 57, effective October 18, 1987.

General Authority: SDCL 3-13-49, 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:02:03. Enrollment of participants

An eligible employee may become a participant by signing a participation agreement. Participation becomes effective on the first day of the month following the date on which the participation agreement is signed. If a new employee signs and files a participation agreement on the employee's date of hire, that agreement may become effective immediately. The plan may not accept any deferrals unless a signed participation agreement is on file in the office of the administrator or the third-party administrator.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-49.

62:03:02:04. Participation agreement

The administrator shall establish a form of participation agreement which includes the name, address, social security number, and birthdate of the participant and the participant's beneficiary; the name and address of the participant's employer; the participant's selection of investment alternatives; and any other information necessary for the administration of the plan.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-50.

62:03:02:05. Modification of enrollment

Subject to the limitations contained in this article, a participant may modify the terms of the participant's participation at any time.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-49.

62:03:02:06. Revocation of enrollment

A participant may cease making deferrals at any time.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-49.

62:03:02:07. Designation of beneficiary—Distribution of benefits

A participant may designate a beneficiary to receive the participant's benefits under the plan in case of the death of the participant. If the beneficiary does not survive the participant or if no beneficiary is designated, the participant's benefits shall be paid as follows:

- (1) To the participant's surviving spouse;
- (2) If there is no surviving spouse, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If there is no surviving spouse and there are no surviving children, then to the participant's estate.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:02:08. Deferred compensation plans only as supplemental retirement plans

No political subdivision may maintain as its principal retirement plan a deferred compensation plan unless the deferred

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compensation plan was established prior to 1974. Any deferred compensation plan established pursuant to SDCL chapter 3–13 may only be supplemental or secondary to the political subdivision’s primary plan.

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–12–58.

Law Implemented: SDCL 3–12–65, 3–12–66, 3–13–49.1.

CHAPTER 62:03:03**AMOUNTS OF DEFERRALS****Section**

62:03:03:01.	Minimum deferral.
62:03:03:02.	Maximum deferral.
62:03:03:03.	Catch up.
62:03:03:03.01.	Alternative catch up.
62:03:03:03.02.	Mandated choice between catch up provisions.
62:03:03:04.	Repealed.

62:03:03:01. Minimum deferral

A participant may not defer less than \$25 a month.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989.

General Authority: SDCL 3–13–49, 3–13–54.

Law Implemented: SDCL 3–13–54.

62:03:03:02. Maximum deferral

Except as provided in § 62:03:03:03, a participant may not defer more in any plan year than the lesser of the applicable dollar amount associated with a particular year pursuant to § 457(e)(15)(A) of the code, as indexed after 2006 pursuant to § 457(e)(15)(B) of the code, or one hundred percent of the participant’s includible compensation.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–54.

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62:03:03:04
Repealed

62:03:03:03. Catch up

Effective for each of the three calendar years immediately preceding a participant's normal retirement date, a participant may defer twice the dollar amount specified in § 62:03:03:02.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:03:03.01. Alternative catch up

Effective for any year that a participant is age 50 years or older, the participant may make an additional elective deferral equal to the applicable dollar amount associated with a particular year pursuant to § 414(v)(2)(B) of the code, as indexed after December 31, 2006, pursuant to § 414(v)(2)(C) of the code, in addition to the participant's maximum deferral under § 62:03:03:02.

Source: 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:03:03.02. Mandated choice between catch up provisions

A participant may not exercise both the provisions of § 62:03:03:03 and the provisions of § 62:03:03:03.01 in the same year.

Source: 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:03:04. Other limitations. Repealed

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; repealed, 28 SDR 111, effective February 14, 2002.

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CHAPTER 62:03:04

PARTICIPANTS' ACCOUNTS AND INVESTMENTS

Section

- 62:03:04:01. Repealed.
- 62:03:04:02. Ownership of deferrals and investments—Assets held in trust—Time limit on transfers.
- 62:03:04:03. Election of investments by participants.
- 62:03:04:04. Transfer of funds.
- 62:03:04:05. Establishment of accounts.
- 62:03:04:06. Allocation of investment return—Accounting date.
- 62:03:04:07. Accounting dates and valuation.
- 62:03:04:08. Participant statements.

62:03:04:01. Selection of investments. Repealed

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; repealed, 28 SDR 111, effective February 14, 2002.

62:03:04:02. Ownership of deferrals and investments—Assets held in trust—Time limit on transfers

A participant does not have actual ownership of deferrals and investments but has a contractual right to receive benefits under the plan. In accordance with § 457(g) of the code, all amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts shall be held in trust for the exclusive benefit of the participant until paid or made available to the participant or the participant's beneficiary pursuant to the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of South Dakota.

All amounts of compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, all amounts of compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

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62:03:04:05

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-53, 3-13-54.

62:03:04:03. Election of investments by participants

Each participant may elect to have deferrals invested in one or more of the investment alternatives selected by the state investment officer. A participant may change the election for future deferrals at any time.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:04:04. Transfer of funds

Subject to any limitations imposed by a vendor or by a third-party administrator, a participant may elect to transfer any portion of the account balance from one offered investment alternative to another at any time, provided notice is given to the third-party administrator. Any costs associated with such a transfer shall be borne by the participant and shall be deducted from the account.

Source: 14 SDR 57, effective October 18, 1987; 14 SDR 95, effective January 10, 1988; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-53, 3-13-54.

62:03:04:05. Establishment of accounts

An account shall be established for each participant. The account shall be the basis for any distribution to the participant or to the participant's beneficiary, surviving spouse, surviving children, or estate pursuant to § 62:03:02:07.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-53, 3-13-54.

62:03:04:06**ADMINISTRATIVE RULES****62:03:04:06. Allocation of investment return—Accounting date**

The total investment return on any offered investment shall be allocated to the account of each participant based on the proportion the participant's account bears to all other accounts which have been invested in the same investment alternative. Allocations shall be made on each accounting date. The last day of each calendar quarter is an accounting date. The board may provide additional accounting dates.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–53, 3–13–54.

62:03:04:07. Accounting dates and valuation

Each offered investment alternative shall be valued on each accounting date. The valuation shall be at market value. Any charges against the value shall be explicitly disclosed.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–53, 3–13–54.

62:03:04:08. Participant statements

Each participant shall be provided with a statement of the participant's account by no later than 45 days after the close of each plan quarter.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–53, 3–13–54.

CHAPTER 62:03:05**DISTRIBUTIONS****Section**

62:03:05:01. Conditions for distribution.

62:03:05:02. Selection of normal retirement date—Amendment.

62:03:05:03. Severance from employment.

DEFERRED COMPENSATION PLAN

62:03:05:03

Section

- 62:03:05:04. Beginning of distribution.
- 62:03:05:05. Form of distribution—Period of distribution.
- 62:03:05:06. Unforeseeable emergency.
- 62:03:05:07. In-service distributions of small amounts—Calculation—Handling of certain involuntary distributions.

62:03:05:01. Conditions for distribution

Deferrals may be distributed only upon severance from employment with a participating employer, upon the death of the participant, upon an unforeseeable emergency as set out in § 62:03:05:06, or upon an in-service distribution as set out in § 62:03:05:07.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3–13–49, 3–13–54.

Law Implemented: SDCL 3–13–54.

62:03:05:02. Selection of normal retirement date—Amendment

A participant may select a normal retirement date. The normal retirement date may not be earlier than the date on which the participant severs the participant's employment. If a participant does not make a selection, the participant's normal retirement date is as defined in SDCL chapter 3–12.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3–13–54.

Law Implemented: SDCL 3–13–54.

62:03:05:03. Severance from employment

If a participant returns to employment or enters into a contract with a participating employer within 30 days after a severance from employment, no severance from employment occurs for the purposes of the plan. If a participant provided contractual services to a participating employer, severance from employment occurs at the expiration of all contracts with a participating employer without expectation of any future employment or contractual relationship with any participating employer.

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Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-49, 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:05:04. Beginning of distribution

Distribution of deferrals to a participant shall begin no earlier than 30 days following the participant's severance from employment with a participating employer. Any irrevocable election of a benefit commencement date made by a participant or a beneficiary prior to January 1, 2002, and any defaulted distribution other than a defaulted distribution to an annuity option are revocable as of January 1, 2002. No distribution to an independent contractor of a participating employer may begin until one year after the date on which all contracts with any participating employer have expired. Notwithstanding the foregoing, distributions of deferrals must begin no later than the latter of April 1 of the calendar year following the calendar year in which the participant reaches 70½ years of age or April 1 of the calendar year following the calendar year of retirement.

Beneficiary distributions under the plan must begin and subsequent payments must be made no later than the required beginning date and subsequent distribution dates under § 401(a)(9) of the code, as follows:

(1) The beginning date for distributions to nonspousal beneficiaries must be no later than December 31 of the calendar year immediately following the calendar year in which the participant dies. However, if the 5-year distribution rule of § 401(a)(9)(B)(ii) is used, the entire distribution must be made as of December 31 of the calendar year which contains the fifth anniversary of the date of the participant's death;

(2) The beginning date for distributions to spousal beneficiaries must be no later than December 31 of the calendar year immediately following the calendar year in which the participant dies or December 31 of the calendar year in which the participant would have reached age 70½.

DEFERRED COMPENSATION PLAN

62:03:05:05

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:05:05. Form of distribution—Period of distribution

A participant may elect to receive the participant's distribution in any of the following forms:

- (1) A lump sum;
- (2) Equal monthly installments over a fixed period; or
- (3) Any other form offered by the third-party administrator.

The election must be made prior to the time any amounts become payable. A participant or a beneficiary who has chosen a payment form other than an annuity shall have the ability to change that payment option, subject to any administrative restrictions and charges established by the board.

If the distribution begins prior to the participant's death, the entire interest shall be distributed over the life expectancy of the participant or the life expectancies of the participant and a designated beneficiary. Any amount not distributed during the participant's life must be distributed after the participant's death at least as rapidly as under the distribution method being used on the date of the participant's death. If the distribution begins after the participant's death, the entire amount payable to the participant must be paid during a period of no more than five years, unless the distribution commences within one year and the participant's spouse is the named beneficiary, then during the life expectancy of the surviving spouse.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:05:06. Unforeseeable emergency

If a participant suffers an unforeseeable emergency, the participant may request an immediate distribution of all or part of the participant's deferrals. If the administrator approves the request, the distribution shall be made to the extent necessary to satisfy the need, including payment of federal income tax withholding, if necessary. If the administrator denies the request, the participant may appeal the denial to the board by giving notice of intention to appeal within 30 days after the date of the administrator's written notice of denial. The appeal shall be conducted in accordance with SDCL chapter 1-26. No distribution may be made to the extent that the unforeseeable emergency may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the participant's assets to the extent that the liquidation does not cause severe financial hardship, or by discontinuation of deferrals under the plan. The need to send a participant's child to college, divorce proceedings, or the desire to purchase a home are not considered unforeseeable emergencies. Any amount that is distributed on account of an unforeseeable emergency is not an eligible rollover distribution and the participant may not elect to have any portion of the distribution paid directly to an eligible retirement plan.

The provisions of this section do not apply if a distribution may be made pursuant to § 62:03:05:07.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:05:07. In-service distributions of small amounts—Calculation—Handling of certain involuntary distributions

Any other provision of this chapter notwithstanding, a participant may receive an in-service distribution from the plan, or the plan administrator may render an involuntary distribution to the participant, under the following conditions:

- (1) The participant is inactive in the plan and has made no deferrals for at least two years prior to the distribution;
- (2) The total distribution—whether elective or involuntary or both—does not exceed \$5,000; and
- (3) The participant previously has not received either an elective or an involuntary distribution under the plan.

If implementing subdivision (2) of this section, the value of a participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earning allocable thereto) within the meaning of §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e) of the code.

If an involuntary distribution is in excess of \$1,000 and if the participant does not elect to have the distribution transferred to an eligible retirement plan pursuant to § 401(a)(31) of the code or does not elect to receive the distribution directly, the distribution shall be transferred to an individual retirement plan of a designated trustee or issuer. The plan administrator shall notify the participant in writing that the distribution may be transferred to another individual retirement plan.

Source: 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

CHAPTER 62:03:06

ADMINISTRATION

Section

62:03:06:01.	Conflict of interest.
62:03:06:02.	Assignment.
62:03:06:03.	Trustee-to-trustee transfer and rollover into account.
62:03:06:03.01.	Trustee-to-trustee transfer from account.
62:03:06:03.02.	Rollover from account.
62:03:06:04.	Operation of plan for benefit of participants—Assets held in trust.
62:03:06:05.	Repealed.
62:03:06:06.	Filing of required forms.
62:03:06:07.	Correction of errors—Excess deferrals.
62:03:06:08.	Correction of errors—Payroll error.

62:03:06:01**ADMINISTRATIVE RULES****62:03:06:01. Conflict of interest**

No employee of a participating employer and no spouse or dependent of the employee may act as or represent a third party administrator or a vendor in a matter concerning the plan, except that the South Dakota investment council and its employees may invest all or part of the fund.

Source: 14 SDR 57, effective October 18, 1987; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-51.1, 3-13-54.

62:03:06:02. Assignment

No participant may assign or otherwise alienate any right to benefits under the plan except through the provisions of a qualified domestic relations order as defined in § 414(p) of the code.

Source: 14 SDR 57, effective October 18, 1987; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-51.1, 3-13-54.

62:03:06:03. Trustee-to-trustee transfer and rollover into account

To the extent permitted by law, a participant may transfer a portion or all of the participant's account in another plan which is eligible under § 401(a), 403(b), 408, or 457 of the code into this plan by trustee-to-trustee transfer or by rollover. The plan shall account for such amounts separately.

Source: 14 SDR 57, effective October 18, 1987; 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:06:03.01. Trustee-to-trustee transfer from account

For the purpose of acquiring credited service in a qualified governmental defined benefit retirement plan as identified un-

DEFERRED COMPENSATION PLAN

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der § 401(a) and defined in § 414(d) of the code, a participant may transfer a portion or all of the participant's account in the plan by trustee-to-trustee transfer to the government defined benefit retirement plan.

Source: 28 SDR 111, effective February 14, 2002.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:06:03.02. Rollover from account

A participant or a participant's surviving spouse may transfer a portion or all of the participant's account by rollover to another plan which is eligible under §§ 401(a), 403(b), 408, or 457 of the code. A participant's beneficiary who is not the participant's surviving spouse may transfer a portion or all of the participant's account by rollover to a plan which is eligible under § 408 of the code.

Source: 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:06:04. Operation of plan for benefit of participants— Assets held in trust

The plan and its assets, until made available to a participant or a beneficiary, shall be maintained in trust for the sole benefit of the participants of the plan.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-53.

62:03:06:05. Transfer of accounts upon termination of vendor contract. Repealed

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; repealed, 28 SDR 111, effective February 14, 2002.

62:03:06:06. Filing of required forms

Any form required under the plan which causes a change on a participant's payroll must be received in the office of the

62:03:06:06**ADMINISTRATIVE RULES**

third-party administrator prior to the first of the month in which the change is to become effective, and the participant must notify the participant's employer prior to the last date on which the participant's employer can make payroll changes effective. If a form is filed too late for a change to be made effective for the next following pay period, the change becomes effective in the subsequent pay period.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:06:07. Correction of errors—Excess deferrals

If, due to an error, a participant defers more than the permissible amount, the third-party administrator may correct the error by returning the excess deferral to the participant.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

62:03:06:08. Correction of errors—Payroll error

If, due to a payroll error, a participant's deferral is deposited in an investment alternative other than the one selected by the participant, the third-party administrator may correct the error by transferring the participant's deferral to the proper investment alternative, subject to any limitations which may be imposed by the vendor. No retroactive adjustment may be made.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

General Authority: SDCL 3-13-54.

Law Implemented: SDCL 3-13-54.

ARTICLE 62:04

SPECIAL PAY RETIREMENT PROGRAM

Chapter

- 62:04:01. Definitions and general terminology.
- 62:04:02. Administration.
- 62:04:03. Distributions.

CHAPTER 62:04:01

DEFINITIONS AND TERMINOLOGY

Section

- 62:04:01:01. Definitions in general.
- 62:04:01:02. Definition of specific terms.
- 62:04:01:03. Qualifications in regard to compensation.

62:04:01:01. Definitions in general

Terms used in this article have the same meaning as they are defined in SDCL 3-12-47 or in SDCL 3-13A-2, unless otherwise so specified.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-13A-4.

Law Implemented: SDCL 3-13A-4.

62:04:01:02. Definition of specific terms

Terms used in this article mean:

(1) “Direct rollover,” a payment by the program to an eligible retirement plan specified by the participant;

(2) “Distributee,” a participant or former participant; a participant’s or former participant’s surviving spouse with regard to the interest of the surviving spouse; or a participant’s or former participant’s former spouse who is an alternate payee under a qualified domestic relations order, as defined in § 414(p) of the code, with regard to the interest of the former spouse;

(3) “Eligible retirement plan,” an individual retirement account described in § 408(a) of the code; an individual retirement annuity described in § 408(b) of the code; an annuity plan described in § 403(a) of the code; or a qualified plan described in § 401(a) of the code, any of which accepts a participant’s rollover distribution, except that in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity;

(4) “Eligible rollover distribution,” any distribution of all or any portion of the balance to the credit of the participant, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and the participant’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent the distribution is required under § 401(a)(9) of the code; or any other distribution that is reasonably expected to total less than two hundred dollars during a single plan year;

(5) “Plan year,” a calendar year ending on December 31.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–13A–4.

Law Implemented: SDCL 3–13A–4.

62:04:01:03. Qualifications in regard to compensation

A participant’s compensation, for purposes of application of the provisions of SDCL 3–13A–5, paid or made available during a plan year shall include any elective deferral, as defined in § 401(g)(3) of the code, and any amount which is contributed or deferred by the participant’s employer at the election of the participant and which is not includible in the gross income of the participant by reason of § 125, § 132(f)(4) or § 457 of the code.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3–13A–4.

Law Implemented: SDCL 3–13A–5.

CHAPTER 62:04:02

ADMINISTRATION

Section

62:04:02:01. Month of a member's birth date.

62:04:02:01. Month of a member's birth date

For purposes of participation in the program, the first day of the month in which a member's birthday falls shall be considered to be the member's birthday.

Source: 31 SDR 191, effective May 22, 2005.

General Authority: SDCL 3-13A-4.

Law Implemented: SDCL 3-13A-4.

CHAPTER 62:04:03

DISTRIBUTIONS

Section

62:04:03:01. Direct rollovers.

62:04:03:01. Direct rollovers

A participant or a participant's surviving spouse may elect, at the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an eligible retirement plan specified by the participant or the surviving spouse. A participant's beneficiary who is not the participant's surviving spouse may elect, at the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to a plan specified by the beneficiary if the plan is eligible under § 408 of the code.

Source: 31 SDR 191, effective May 22, 2005; 33 SDR 212, effective June 4, 2007.

General Authority: SDCL 3-13A-4.

Law Implemented: SDCL 3-13A-19.